

CASE

NUMBER:

99-165

November 22, 2000

RECEIVED

Lexington Office:
PO Box 14241
Lexington, KY 40512-4241

Mr. Tom Dorman
Executive Director
Kentucky Public Service Commission
P. O. Box 615
Frankfort, KY 40602

NOV 22 2000

PUBLIC SERVICE
COMMISSION

606 288-0215 Phone
606 288-0258 Fax
Note: New Area Code
859

Dear Mr. Dorman:

Pursuant to the Commission's Orders in Case No. 1999-165, Columbia Gas of Kentucky, Inc., ("Columbia") hereby submits information regarding the marketers that have been approved and certified as creditworthy to participate in Columbia's Customer CHOICESM program. The participating marketers to date are:

Interstate Gas Supply
5020 Bradenton Avenue
Dublin, Ohio 43017
(614) 923-1000
Contact: Mr. Dave Burig

Kentucky Natural Gas Service, LLC
160 Morgan Street
Versailles, Kentucky 40383
(859) 873-5455
Contact: Angela Hall

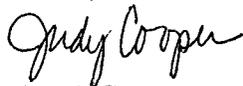
Stand Energy Corporation
1077 Celestial Street
Suite 110
Cincinnati, Ohio 43130
(513) 621-1113
Contact: Ms. Stacey Dover

Nicole Energy Services, Inc.
513 East Rich Street
Suite 306
Columbus, Ohio 43215
(614) 221-5004
Contact: Mr. Jamil McGhee

Copies of each marketer's standard contract including dispute resolution procedures are attached. Also attached are copies of the aggregation agreement of each marketer with Columbia and statistics on participation and billing rates.

Columbia will provide additional information as it becomes available. If you have any questions, please give me a call at (859) 288-0242.

Sincerely,



Judy M. Cooper

cc: Marty Huelsmann, Chairman
Ed Holmes, Vice Chairman
Gary Gillis, Commissioner
Becky Phillips

COLUMBIA GAS OF KENTUCKY
 CUSTOMER CHOICE PROGRAM
 NOVEMBER 22, 2000

Customers Enrolled for Billing Month of:	<u>November 2000</u>	<u>December 2000*</u>
Residential	261	10,953
Commercial	<u>170</u>	<u>2,751</u>
Total Enrolled	431	13,704

Number of Customers by Marketer:	<u>November 2000</u>	<u>December 2000*</u>
Stand Energy Corporation	302	648
Kentucky Natural Gas Service	129	698
Interstate Gas Supply	----	12,137
Nicole Energy Services	----	221

Billing Rates	<u>November 2000</u>	<u>December 2000*</u>
Kentucky Natural Gas	\$6.1544	\$6.9035 \$7.90
Interstate Gas Supply		\$6.903 \$6.7496 \$0.00
Stand Energy Corporation	\$6.65	\$7.8927
Nicole Energy Services		\$6.55 \$6.35 \$6.11 \$5.80 \$5.66

* December numbers are preliminary pending final billing information



FORM #KKGK01

TERMS AND CONDITIONS

Please save or print this page for your records. If you prefer, contact us and we will mail a copy to you.

We guarantee to the customer at least a ten percent (10%) discount on Columbia Gas of Kentucky's gas cost recovery rate.

1. **BILLINGS AND PAYMENTS:** Columbia (on Seller's behalf) shall invoice Buyer for deliveries made in the prior month. Buyer will pay Columbia on or before the due date of Columbia's bill. Buyers presently on Columbia's budget payment plan will automatically continue; however, budgets will be revised based on the new gas costs.

2. **TERMINATION:** Any notice of termination or cancellation of this agreement by Seller shall be delivered to Buyer and Columbia at least thirty (30) days prior to discontinuing the service.

3. **REGULATIONS:** This sale is subject to all applicable governmental laws, orders, directives, rules and regulations. This contract may be terminated without penalty in the event the small volume gas transportation service program is terminated by Columbia or the Kentucky Public Service Commission.

4. **FORCE MAJEURE:** Neither party shall be liable to the other party for any failure to perform any provision or obligation of this agreement (except Buyer's obligation to pay for gas delivered) if such failure is caused by or results directly or indirectly from any act of God; Federal, state or municipal; legislation or regulation; fires, floods, storms, or other natural occurrences, strikes, wars or accidents, the unwillingness of any pipeline or local distribution company to accept gas for delivery or any other cause

beyond the control of the party failing to perform.

5. NOTICE: Any notice required herein shall be deemed to have been properly served if delivered personally or if sent by certified mail to the addresses stated on the face hereof.

6. DISPUTES: If a dispute arises between Buyer and Seller, Seller shall cause its director of public relations to intervene and orally acknowledge the complaint within five (5) business days of notification. The director shall prepare a written report, which shall include the name of the complaining party and the details of the complaint. The director shall communicate the results of the preliminary investigation to the complainant within thirty (30) days after the complaint was received, describing any course of action to be taken. A file of all complaints shall be maintained at the Seller's office for a period of three (3) years. If that proves to be unsuccessful, Buyer or Seller may submit the matter to the Kentucky Public Service Commission.



Kentucky Natural Gas Service

Online Order Form

Submission of the **Kentucky Natural Gas Service Online Order Form** constitutes an electronic agreement for the purchase of natural gas supply containing the **Form #KKGK01 Terms and Conditions** of my service with my Marketer, Kentucky Natural Gas Service, LLC. I understand and agree to these terms, and agree to participate in the program as a Small Volume Gas Transportation Service customer. My Marketer is entitled to obtain my historic and current gas usage data from Columbia Gas of Kentucky. I understand that Columbia Gas of Kentucky will deliver to me the gas I purchase from my Marketer. I will receive one bill from Columbia Gas of Kentucky that identifies my Marketer and includes both the delivery charge from Columbia and the gas purchase charge from my Marketer. **You may cancel this agreement for any reason before 12:00 AM one week from the date of submission.**

Name:	<input type="text"/>
E-Mail:	<input type="text"/>
Company:	<input type="text"/>
Street Address:	<input type="text"/>
City, State, Zip:	<input type="text"/> , <input type="text"/> <input type="text"/>
Phone:	<input type="text"/>
Columbia Gas Account Number:	<input type="text"/>
Term:	One (1) year with automatic renewals unless terminated in writing by either party at least thirty (30) days prior to the end of the term.

Pricing Terms:

Ten percent (10%) discount on Columbia Gas of Kentucky's gas cost recovery rate.

Submit

Reset

Interstate Gas Supply

[Click to print these Terms & Conditions](#)

Terms & Conditions - Form #K10G Keep this portion for your records

**MY PRICE WILL BE CALCULATED EACH MONTH TO BE 10%
LESS THAN COLUMBIA'S QUARTERLY EXPECTED GAS COST.**

1. The term of this agreement will begin with initial gas deliveries and will continue for 12 consecutive months ("Primary term") & year to year thereafter ("Secondary term(s)") until canceled by written notice 30 days before the end of a primary or secondary term or as otherwise provided by this agreement. Interstate Gas Supply, Inc. (IGS) will use its best efforts to transfer gas service within 45 days of receipt and acceptance of the consent form. Due to the volatility of gas prices IGS reserves the exclusive right to change its terms and conditions and therefore to not accept offer #K10G consent forms at any time. If IGS were to not accept a consent form then the rejected consent form will be sent back to me along with a new consent form with IGS' new terms and conditions.
2. The Choice Program is subject to on going Public Service Commission of Kentucky jurisdiction and I understand that if the Choice program is terminated by the Public Service Commission of Kentucky this agreement will be terminated without penalty to me.
3. For my convenience I will receive only one bill, which will be issued by Columbia Gas of Kentucky (CKY) and will contain IGS' gas cost plus sales tax and all of Columbia's transportation charges. If I pay under the check free or budget bill payment plan I understand that this service is available and will remain the same. I agree to continue to pay CKY for the entire gas bill under Columbia's payment terms and conditions.
4. In the event of a billing dispute I should contact Columbia Gas of Kentucky at the number listed on their bill for issues regarding volume or metering. For other questions about pricing I should contact IGS at 1-800-280-4474. I understand that IGS will use the following dispute resolution procedure about my agreement with IGS: Upon contacting IGS, I will explain my issues to the IGS representative who will attempt to answer my concerns and work out a mutually satisfactory solution. Failing a resolution, the IGS representative will refer my issue(s) to an IGS supervisor who will promptly contact me to discuss/resolve the issue(s). For any problems regarding the CKY Choice program you may contact the Public Service commission of Kentucky at 1-800-772-4636. If a dispute cannot be resolved in the above fashion I agree that any legal action involving any and all disputes arising under or relating to this agreement shall be brought in a court of the State of Ohio sitting in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio sitting in Columbus, Ohio. I submit to the personal jurisdiction of such courts and irrevocably waive any and all objections that I now have or might in the future have to any and all such courts as the proper forum for any and all actions arising under or related to this agreement.
5. Price: My price will be calculated each month to be 10% less than Columbia's Quarterly Gas Cost Recovery rate (GCR).
6. I will be responsible for all charges assessed by Columbia for (i) adjustments to Columbia's Expected Gas Cost (ii) transportation of the Gas and other applicable charges by Columbia for delivery of gas & (iii) sales tax at the delivery point. IGS may continue my service for secondary terms under a fixed rate per MCF or base my rate using a percentage off of Columbia's cost. IGS will notify me at least 60 days prior to the end of any term of their desire to continue service under this agreement and of any changes to the terms and conditions. If I do not cancel 30 days prior to the end of a primary or secondary term the agreement will continue for a secondary term and will include any of the proposed changes. After the primary term I can terminate this agreement or continue purchasing gas from IGS.
7. This contract is assignable by IGS without my consent and subject only to any regulatory approvals required under the Customer Choice program.
8. I understand that if I move to another address within Columbia's service territory that this agreement will automatically continue at the new location under a new Columbia account number. If IGS is unable to automatically enroll me at my new address then upon request I agree to provide them with my new address and account number.
9. This agreement shall be interpreted and enforced according to the laws of the State of Ohio, without giving effect to its choice of law principles.

I have agreed to the terms and conditions contained in electronic agreement version # K10G, and I understand that my price will be calculated each month to be 10% less than Columbia's Quarterly Expected Gas Cost for the purchase of natural gas supply from my marketer, Interstate Gas Supply. I understand and agree to those terms and conditions, which are incorporated herein by reference, and agree to participate in the program as a transportation delivery service customer. My marketer is entitled to obtain my historic and current gas usage data from Columbia Gas.

Today's Date:

Business Name if Applicable:

First Name:

Last Name:

Columbia Gas of Kentucky Account Number:

Columbia Gas of Kentucky Account Holder E-mail:

Columbia Gas of Kentucky Account Holder Service Address:

City:

State: Zip:

Columbia Gas of Kentucky Account Holder U.S. Mailing Address:

City:

State: Zip:

Phone Number (with area code):

If you wish to cancel this agreement, you must do so before 12:00 am one week from the date of this agreement.



**Natural Gas Purchase & Sale Agreement
for Columbia Gas of Kentucky Customer Choice Program**

1) Parties: This is an agreement between NICOLE ENERGY SERVICES, INC. an Ohio Corporation with an office located at 513 East Rich Street, Suite 306, Columbus, Ohio 43215-5376 (hereinafter "Seller") and CUSTOMERS OF THE COLUMBIA GAS OF KENTUCKY, INC. CUSTOMER CHOICE PROGRAM (hereinafter "Buyer") for the purchase and sale of natural gas to the Buyer's location.

2) Seller's Obligations: The Seller agrees to sell natural gas to the Buyer in accordance with the Buyer's requirements specified in the Transaction Confirmation Sheet attached hereto as Exhibit A. The Seller shall deliver the natural gas through Columbia Gas of Kentucky, INC. (hereinafter "Columbia") pipelines for delivery to the Buyer's location in accordance with the rules and regulations governing Columbia's Customer Choice Program.

3) Buyer's Obligations: The Buyer authorizes the Seller to arrange for transportation services for the delivery of natural gas to the Buyer's location utilizing Columbia pipelines. The Buyer shall accept delivery of natural gas supplied by the Seller through Columbia pipelines to the Buyer's location and make timely payments for receipt of such natural gas as defined by paragraph (5) FIVE of this Agreement.

4) Purchase Price and Taxes: The purchase price for all gas sold and purchased under this Agreement shall be _____ per MCF as measured by Columbia on the meter residing at the Buyer's location. The Buyer is also fully responsible for any and all applicable state and local taxes assessed on the natural gas delivered to the Buyer's location in addition to any transportation costs assessed by Columbia as a result of the transportation of such natural gas to the Buyer's location. Seller reserves the right to adjust the price on a quarterly basis, but in no event shall the Seller's price be more than 97% of Columbia's current Tariff rate. The time for the quarterly price adjustment will be pursuant to the existing quarterly price adjustment schedule utilized by Columbia.

5) Billing, Timely Payments & Termination of Agreement for Failure to Pay:

(A) **BILLING-** the Buyer will continue to receive a single invoice from Columbia setting out separately (1) the contracted amount charged by the Seller for the natural gas delivered hereunder, (2) any and all applicable state and local taxes, and (3) the amounts charged by Columbia to transport the gas to the Buyer's location.

(B) **TIMELY PAYMENTS-** the Buyer shall make all payments to Columbia by the due date specified on Columbia's invoice, for natural gas delivered to the Buyer's location by the Seller. Any payments received after the specified due date will not be considered timely.

(C) **FAILURE TO MAKE TIMELY PAYMENTS-** Seller shall have the right to terminate this agreement for failure of the Buyer to make timely payments only after the Seller has given the Buyer (30) THIRTY days written notice of intent to terminate this agreement for failure to make

timely payments.

6) Duration of Agreement and Renewal Procedures:

(A) DURATION- This Agreement is binding upon both the Seller and the Buyer for the duration of (12) TWELVE months beginning on the first date of delivery of natural gas (by the Seller), to the Buyer's location.

(B) EXPIRATION- After one full year, this Agreement will expire giving both the Buyer and the Seller the right to renew, terminate or renegotiate this Agreement. However, the Seller reserves the right to terminate this Agreement if performance of the Seller's obligations hereunder are commercially impracticable.

(C) AUTOMATIC RENEWAL- Upon the expiration of the duration of this Agreement, this Agreement shall be automatically renewed for an additional (12) TWELVE months, in the absence of written notice to the contrary provided by the Buyer or Seller to the other party in accordance with the notice provisions specified in Paragraph 6(D) of this Agreement.

(D) NOTICE- (1) No more than (90) NINETY days and no less than (45) FORTY-FIVE days prior to the expiration of this Agreement, the Seller shall provide written notice to the Buyer of both the Seller and Buyer's right to renew, terminate or renegotiate this Agreement. (2) No less than (30) THIRTY days prior to the expiration of this Agreement, the Buyer shall provide written notice to the Seller of its desire to renew, terminate or renegotiate this Agreement. (3) Any and all such notices expressing a desire to renew or renegotiate this Agreement shall contain any proposed changes to the terms and conditions of this Agreement. (4) To the maximum extent possible, the Seller shall provide Columbia with written notice, at least (30) THIRTY days prior to the expiration of this Agreement, of its desire to discontinue providing natural gas to the Buyer's location.

7) Force Majeure: All obligations imposed by this Agreement on each party which are affected by the events described in this paragraph, except for payment of money for gas already delivered, shall be suspended while compliance is prevented, in whole or in part, due to causes beyond either party's reasonable control such as acts of God, strike, fire, war, explosion, freezing of wells or pipelines, partial or whole failure of wells or sources of supply of gas, by federal, state, or local law, pipeline capacity restrictions, or by any other cause or causes beyond either party's reasonable control.

9) Change of Location: (1) If the Buyers moves and changes his or her location, the Buyer is required to provide written notice to the Seller at least (30) THIRTY days prior to such relocation. (2) A change in the Buyer's location will automatically terminate this Agreement effective the date the Buyer notifies Columbia to disconnect their natural gas at the Buyer's original location. (3) If there is a change in the Buyer's location which automatically terminates this Agreement, the Buyer is still responsible for the payment of all services provided by the Seller prior to such relocation (4) If the Buyer relocates to a new location that is eligible for participation in the Columbia Customer Choice Program, the Buyer shall contact the Seller's customer service representative at the telephone number or address listed below to execute a new Agreement for the purchase and sale of natural gas at the Buyer's new location.

10) Assignments by Buyer or Seller:

(A) The Seller may assign all or any portion of its rights, duties and obligations under this Agreement to any approved marketer in the Columbia Customer Choice Program, provided that

written notice of the assignment is given to the Buyer and Columbia at least (30) THIRTY days prior to the effective date of any such assignment.

(B) The Buyer may assign all of its rights duties and obligations under this Agreement to subsequent owners of the Buyer's location served under this Agreement, provided that the new owner of such location is qualified to participate in the Columbia Customer Choice Program and written notice is given to the Seller and Columbia at least (30) THIRTY days prior to the effective date of any such assignment

(C) This Agreement shall have full force and effect and be binding upon all respective successors and assigns of both the Buyer and Seller.

11) Regulatory Out Provision: (A) the Columbia Customer Choice Program is subject to the on-going jurisdiction of the Kentucky Public Service Commission (KPSC). In the event that KPSC terminates the Columbia Customer Choice Program before the expiration or termination of this Agreement by either party, both the Buyer and Seller shall have the right to terminate this Agreement without penalty. (B) In the event that KPSC terminates the Columbia Customer Choice Program before the expiration or termination of this Agreement by either party, the Buyer is still responsible for making a complete and final payment for all natural gas actually supplied by the Seller to the Buyer's location.

12) Dispute Resolution: In the event a dispute arises between the Buyer and the Seller concerning any acts controlled by the terms of this Agreement, both the Seller and the Buyer hereby agree to the following dispute resolution procedure: (1) The Buyer shall contact the Seller's customer service number listed below between the hours of 8:30 a.m. and 5:00 p.m. (Eastern Standard Time) Monday through Friday to discuss the full details of the problem with one of the Seller's customer service representatives. (2) In the event the customer service representative of the Seller and the Buyer are unable to resolve the matter, the Buyer shall be immediately referred to the Customer Service Manager on duty. (3) The Customer Service Manager will then investigate the problem and attempt to respond with a resolution of the matter no later than (10) TEN business days after he or she was notified of the dispute. (4) If the Seller's Customer Service Manager and the Buyer are still unable to resolve the dispute, the Buyer may contact the Consumer Services Division (CSD) of KPSC at the telephone number or address listed below. (5) Both the Buyer and Seller hereby agree to cooperate with KPSC and provide any and all necessary information to assist in a timely resolution of the matter in dispute. (6) In the event KPSC needs to contact the Seller, they may contact Jamil McGhee at the telephone number and address provided below:

Nicole Energy Services Inc.
513 East Rich Street, Suite 306
Columbus, Ohio 43215
(614) 221-5004 (Main)
(800) 651-8927(Customer Service)

Kentucky Public Service Commission
Customer Services Division
211 Sower Boulevard
Frankfort, Kentucky

(502) 564-3940 (Main)
(800) 772-4634 (Consumer Services)

13) Consent: By signing this Agreement, the Buyer is (1) giving written consent for the Seller to enroll the Buyer as a residential service customer in the Columbia Customer Choice Program; (2) agreeing to sign the Customer Consent Form, attached herein as Exhibit B, which authorizes the Seller to obtain the Buyer's historical and current gas usage data ; (3) hereby agreeing to all the terms contained in this Agreement; (4) asserting that he or she fully understands the terms of this Agreement and (5) accepting this Agreement as a full and final expression of the intent of all the parties mentioned herein, superseding any and all prior oral or written arrangements made prior to the execution of this Agreement.

AGREED TO AND ACCEPTED THIS ____ DAY OF _____ 2000.

for Nicole Energy Services, INC. (Seller)

Title (Please Print)

Customer of the Columbia Customer Choice Program (Buyer)



Exhibit A: Transaction Confirmation Sheet

Seller: Nicole Energy Services, Inc. 513 East Rich Street, Suite 306 Columbus, Ohio 43215	Buyer:
Attn: Jamil McGhee Phone: (800) 651-8927 Fax: (614) 220-2040	Attn: Phone: Fax:
Duration:	
Price:	
Delivery Point:	
Character of Service:	Firm
Performance Obligation:	The performance obligations of the Buyer and Seller listed herein are to be as specified in the Natural Gas Sale & Purchase Agreement dated _____ to which this document serves as Exhibit A.

This Transaction Confirmation Sheet has been offered and accepted by the following parties:

Seller: Nicole Energy Services, Inc.

By: _____

Title: _____

Date: _____

Buyer:

By: _____

Title: _____ (if applicable)

Date: _____



Exhibit B: Customer Consent Form

I have signed a written agreement for the purchase and sale of natural gas supply containing the terms and conditions of my service with my Marketer, Nicole Energy Services, Inc. I understand and agree to those terms, and agree to participate in the Columbia Gas of Kentucky Customer Choice Program as a Small Volume Gas Transportation Service Customer. My Marketer is entitled to obtain my historic and current gas usage data from Columbia Gas of Kentucky. I understand that Columbia Gas of Kentucky will deliver to me the gas I purchase from my Marketer. I will receive one bill from Columbia Gas of Kentucky that identifies my Marketer and includes both the delivery charge from Columbia Gas of Kentucky and the gas purchase charge from my Marketer.

Signature of Customer: _____

Print or Type Name: _____

Columbia Gas of Kentucky Account Number: _____



Stand Energy Corporation Natural Gas Agreement

TERMS AND CONDITIONS Buyer agrees that, subject to the following terms and conditions, Stand Energy Corporation, (SEC) 1077 Celestial Street, Suite 110, Cincinnati, OH 45202 will supply and manage all of Buyer's natural gas requirements for a period of three (3) years. This service will continue year-to-year thereafter unless terminated by either party upon written notice to the other 30 days prior to the anniversary date. SEC shall notify Buyer of the expiration date 60 days prior to the then applicable expiration date. Written notice of termination by Buyer may be sent to SEC at the address listed below. The continuation of this gas transportation program is subject to the approval of the Kentucky Public Service Commission (KPSC). If the KPSC or another governmental authority causes the program to terminate, this agreement will be terminated without penalty to Buyer or to SEC. In addition, the delivery of gas by SEC cannot be terminated or interrupted by Columbia Gas of Kentucky as a result of any dispute between SEC and Buyer. SEC also agrees if it intends to stop selling gas to Buyer during the term of this agreement, SEC will, to the maximum extent possible, provide Buyer with 30 days written notice prior to disconnection. If this occurs, Buyer understands that Columbia Gas of Kentucky will once again provide gas sales service. In the event of electric deregulation, SEC shall have the right of first refusal to supply electric power and/or electric energy services at market rates.

PRICE The price paid for natural gas under this Agreement is a market-based price. This price could change monthly based on prevailing market conditions. This price is subject to applicable state and local sales tax.

BILLING Columbia Gas of Kentucky will provide you a single bill. The SEC gas supply charge will replace your current Gas Cost Recovery (GCR) charge. In addition your bill will contain Columbia's usual charges and applicable taxes. The remainder of the bill will basically stay the same. Payment must be made in accordance with Columbia Gas of Kentucky's payment policies.

INQUIRIES SEC encourages all of its customers who might have a question or concern to contact us at 1-800-598-2046 or in Cincinnati at (513) 621-1113. In the event of a dispute, an SEC service representative will attempt to work out a mutually satisfactory solution. Failing a resolution, the SEC service representative will refer the issue(s) to an SEC supervisor who will promptly contact Buyer to discuss/resolve the issue(s). SEC will respond to any dispute within five (5) business days and will resolve the differences within a reasonable time period depending upon the nature of the issue in the Customer Choice® Program. SEC reserves the right to transfer this Agreement to any successor company, or third party at its discretion.

*Customer CHOICE® is a registered trademark licensed to Columbia Gas of Kentucky.



Stand Energy Corporation Natural Gas Customer Consent Form

I have signed a written agreement for the purchase of natural gas supply containing the terms and conditions of my service with my Marketer, Stand Energy Corporation. I understand and agree to those terms, and agree to participate in the program as a Small Volume Gas Transportation Service customer. My Marketer is entitled to obtain my historic and current gas usage data from Columbia Gas of Kentucky. I understand that Columbia Gas of Kentucky will deliver to me the gas I purchase from my Marketer. I will receive one bill from Columbia Gas of Kentucky that identifies my Marketer and includes both the delivery charge from Columbia and the gas purchase charge from my Marketer.

Signature

Date

Print or Type Name

Address (If more than one Address/Account Number, please use the attached form.)

City, State

Zip

12 - Digit Columbia Gas of Kentucky Account Number

Telephone No. for Verification

Fax this Consent form and any necessary attachments to 513-621-3773

Celestial Street Suite. 110 Cincinnati, OH 45202
(800) 598-2046 • (513) 621-1113 • fax (513) 621-3773
Visit our web site at <http://www.stand-energy.com>

**FORM OF SERVICE AGREEMENT
FOR SMALL VOLUME AGGREGATION SERVICE
RATE SCHEDULE**

This agreement is made and entered into this 15th day of Sept., 2002, between Columbia Gas of Kentucky, Inc., a Kentucky corporation, 2001 Mercer Road, P. O. Box 14241, Lexington, KY 40512-4241, hereinafter "Company", and Enterprise Gas Supply, a(an) corporation located at 5020 Bradenton Ave, Dayton OH 45317, hereinafter "Agent."

WHEREAS, Agent has secured firm supplies of natural gas which it intends to supply and sell to natural gas customers located on the Company's system, all within the parameters established by the Company for its Small Volume Gas Transportation Service program as set forth in rate schedule Small Volume Aggregation Service ("SVAS").

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its citygate receipt points by Agent and to redeliver such gas supplies to Agent's aggregations of customers, all of whom have elected transportation service from the Company under its tariff Rate Schedule SVGTS.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations of customers and Agent hereby agrees to aggregate in accordance with the following terms and conditions for all aggregations served under this Agreement:

ARTICLE I

Definitions

For purposes of interpreting this Agreement, the following definitions shall apply:

1. Aggregation Service. Aggregation Service is a service provided by the Company that allows Agent to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the requirements of the transportation customer(s) that comprise the membership of the Agent's "aggregation pools," all in accordance with rules that the Company has established regarding delivery requirements, billing and payments, supplier performance requirements, and other similar requirements for participation as an agent in the Company's Small Volume Gas Transportation Service tariff.
2. The Aggregation. The aggregation referred to herein shall mean each aggregation pool that Agent establishes under this Agreement.
3. Customer(s). Customer(s) means a recipient of transportation service provided by the Company under its Rate Schedule SVGTS which secures its supply of gas from Agent. To be a Customer, the Company must have an obligation to supply the individual or entity under its general public utility obligation to serve, under a special contract, or under KRS § 278.475; and the Company must have an economical means of transporting gas to said individual or entity. All customers who participate in the Company's Customer Assistance Program ("CAP") will be served by a single Agent and are not eligible to contract with any Agent except that Agent serving the CAP pool. Agent agrees and understands that if a customer joins the CAP Program after signing up with the Agent, the customer: 1) will be removed from the Agent's customer pool and will be added to the CAP pool; and, 2) will be served by the Agent who was awarded the CAP Supplier Agreement. Columbia shall notify the Agent when any of the customers in the Agent's customer pool have joined CAP and thus, will be served as a member of the CAP pool. Agent shall not assess any penalty to a customer when a customer joins the CAP pool. For the purposes of Company's small volume gas transportation program ("the Program"), the Company shall provide to Agent a list of

customers who have agreed to take service from Agent and who have been verified by the Company through comparison with the Company's customer database.

ARTICLE II

Term

The term of this Agreement shall commence of the first day of the month after execution hereof and, subject to Agent's continued compliance with the requirements outlined herein for participation in this Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from month-to-month, unless terminated by either party, upon at least ninety (90) days advance written notice, or unless terminated pursuant to the provisions of Articles III, VI, and VIII of this Agreement. However, in no case shall any aggregation hereunder included in this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Agent, or except pursuant to the provisions of Articles III, VI, and VIII of this Agreement. Agent shall be required to incorporate sufficient flexibility into its agreements with its end-user customers that it serves, so that the operation of this provision will not contravene end-user customer's rights under those agreements. In the event this Agreement, in its entirety, is terminated in accordance with the procedures contained herein, and Agent no longer supplies natural gas to those customers hereunder aggregated, Agent's customers shall be given the option of either electing an alternate Agent, or returning to the Company's system supply. As stated in Article VIII, if this Agreement is terminated due to Agent's bankruptcy or non-delivery of supplies, then Agent's customers shall be immediately returned to Company's system supply.

ARTICLE III

Requirements for Program Participation

The standards for participation in the Program shall be the creditworthiness standards specified on Sheet 37a of the Company's tariff. Accordingly, in order to participate as an agent in the Company's program, Agent shall, upon request, provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Agent also agrees to allow the Company to conduct a credit investigation as to Agent's credit-worthiness and will pay a \$50 processing fee to the Company to cover the cost of a credit check. Further, if the Company determines that it is necessary, Agent agrees to maintain a cash deposit, a surety bond, an irrevocable letter of credit at a Company-approved bank of the Agent's choosing, or such other financial instrument, as the Company may require during the term of this Agreement in order to assure Agent's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Agent's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as customers are added to, or deleted from, Agent's aggregation pool. Agent agrees that, in the event it defaults on its obligations under this Agreement, Company shall have the right to use such cash deposit or the proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy Agent's obligations under this Agreement. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the gas supplies themselves, the costs of capacity, transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Agent, including, but not limited to, interstate pipeline capacity charges, imbalance charges, cash-out charges, pipeline penalty charges, reservation charges, and any other amounts owed to the Company or amounts for which the Company is or will be responsible related to Agent's participation in this Program.

In the event Agent elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this Agreement, it shall continue its obligations to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Agent shall comply with all applicable provisions of Company's tariff, including the Code of Conduct as set forth on Sheet No. 37 of Company's tariff. Said tariff provisions are incorporated herein by reference. Agent acknowledges that in its capacity as an agent in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner.

As a condition of this Agreement and Agent's participation in the Program, Agent authorizes Company to verify with interstate pipelines Agent's primary delivery point entitlements and deliveries of natural gas supplies as described in Company's tariff Rate Schedule SVAS.

Company will maintain a list of Agents who have met the Program financial and performance requirements. This list will be made available to customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in this aggregation service, Agent agrees to supply its aggregation customers' full service requirements for natural gas on both a daily and monthly basis. If Agent fails to deliver gas in accordance with its aggregation customers' full service requirements for natural gas, Company shall supply natural gas temporarily to the affected aggregation customers, and shall bill Agent the higher of either: 1) the fair market price for that period, or 2) the highest incremental cost of gas for that period that actually was paid by Company, including transportation and all other applicable charges. This gas will not be considered a credit for volumes delivered in the annual reconciliation.

ARTICLE V

Supply Co-Management Defined

Company's aggregation service requires that Agent, as a participant in the Program, accept supply co-management responsibility as defined hereinafter, as a quid pro quo for its participation in this Agreement.

Agent agrees to deliver gas supplies into the Company's designated citygate receipt points on a daily basis, in accordance with the aggregate usage requirements of those customers that comprise each of the Agent's aggregation pools. For those transportation customers that are members of Agent's aggregation pools without daily measurement, Agent must agree to the Company's estimate of customer consumption as provided in Company's tariff and pay all charges assessed by the Company as provided in Company's tariff.

Company assigns, or offers for assignment, only that daily transportation and storage capacity necessary to serve the demand of the Agent's customer group on a day with design temperature. Agent must obtain its own capacity and supply to serve the incremental customer demand on days colder than design. Failure of Agent to deliver volumes on such days shall be grounds for expulsion.

Annual Reconciliation

Agent shall also be required to balance on an annual basis its gas deliveries into the Company's system with the actual overall usage levels of each of Agent's customer aggregation pools, as specified in the Company's tariff.

Company will reconcile imbalances on an annual basis on each July 31st, for Agent, through determination of the difference between: (1) Agent's deliveries for the twelve-month period ended July 31st

and (2) the actual consumption of the Agent's aggregate Customer Group, adjusted for recognition of all adjustments applicable to a prior annual period ended July 31st. The reconciliation will include the unbilled portion of July. Company will complete the imbalance calculation within twenty (20) working days of the end of the annual period.

Agent will have the option to eliminate the imbalance through either: 1) payment from Company for excess deliveries or billing from Company for under-deliveries at the average for the twelve-month period ended July 31st of the mid-range of the Mid-Atlantic Citygate Columbia Gas price index reported for the first trading day of the month in *Gas Daily*, or 2) the exchange of gas with Company via a storage inventory transfer or delivery over the next thirty (30) days. Agent will specify in this Aggregation Service Agreement which option it has selected and the selected option will apply for the reconciliation made at the end of the twelve month period following the selection. Agent may change the option that it has selected once annually on August 1st of each calendar year. If Agent does not change its option as permitted herein, then the latest option selected by Agent shall apply.

Agent Selection: (circle one)

Option 1
(Cash Out)

Option 2
(Exchange)

ARTICLE VI

Billing and Charges

The Company will provide Agent with each of its aggregation pools actual usage data for the aggregation pool's most recent billing period as customers are billed by the Company under Rate Schedule SVGTS.

Agent's transportation quantities shall be determined from the Company's "Monthly Summary Billing Report." The "Monthly Summary Billing Report" reflects customer's actual billed transport volumes as reported to Agent, as generated within the Company's revenue reporting system.

The billings and charges related to the daily balancing service provided by the Company are specified in the Company's tariff.

If Agent has been assigned capacity and subsequently, is excluded from further participation in the Program, as provided in the Code of Conduct of the Company's tariff, or if this Agreement is terminated in accordance with Article VIII, then Company may elect to recall the capacity immediately. If the capacity is recalled, Agent shall remain responsible for the difference between the market value of the assigned capacity for the remainder of the year and the full demand charges.

ARTICLE VII

Payment

On a monthly basis for the term of the Agreement, Company shall make payment to Agent for the revenues billed for the Agent, subject to any deduction for the offsets or recoupments of any amounts owed to the Company as specified herein. The payment shall be at a two and one-half percent (2½%) discount of the total amount billed by the Company for Agent to its total Customer Group(s) for providing natural gas supplies to the Customer Group(s) for that month. Company shall calculate the amount due Agent by first adding together all of the bills for natural gas sold to customers in the Agent's aggregation pools and then multiplying that total amount by ninety-seven and one-half percent (97½%).

Company and Agent agree that all fees, costs, charges and penalties owed to the Company shall be offset and/or recouped from Agent's receivables check. The Company shall have the right to offset or recoup: 1) all amounts or costs that are incurred by Agent related to participation in this Program; 2) all amounts or costs owed directly to the Company; and, 3) all amounts or costs for which the Company is or will be responsible if not paid by Agent, including, but not limited to, capacity charges billed by interstate pipeline companies. In calculating the payment due Agent under this Agreement, said fees, costs, charges and/or penalties shall be deducted from the amount to be paid to Agent after the discount has been applied to the total amount billed by the Company.

Payment to Agent shall be made by the Company within thirty (30) days after the last unit billed in any billing cycle. Said monthly payment shall be made to Agent by the Company regardless of whether any particular customer(s) in Agent's Customer Group(s) pays their bill(s).

The Company reserves the right to adjust Agent's account with regard to payment for amounts billed by Company for Agent for up to two (2) years after the original billing date for any individual customer's bill at issue for accounting, meter reading, measurement accuracy or any other necessary adjustment.

ARTICLE VIII

Remedies

Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Agreement, if Company or Agent fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article VIII, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said thirty (30) day period.

Termination Rights - Non-Delivery or Bankruptcy. Notwithstanding the above paragraph entitled "Defaults" in Article VIII of this Agreement, in the event that Agent fails to deliver gas supplies in accordance with the Rules and Regulations of Company's tariff, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise.

In the event that Agent declares bankruptcy during the term of this Agreement, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise, subject only to any restrictions or requirements that may be imposed by the applicable provisions of the federal bankruptcy code.

Subject to the effect of any applicable provisions of the federal bankruptcy code, if this Agreement is terminated due to non-delivery of supplies by Agent, or due to the bankruptcy of Agent, then the Company shall notify Agent's customers of such termination and immediately shall return all of Agent's customers to the Company's system supply. The Company shall also determine whether or not any capacity previously assigned to Agent must be returned to the Company, based upon Company's determination of its necessity for service to such customers.

Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payment and other remedies outlined in this Agreement and in the Company's tariffs for non-

performance herein shall be Company and Agents' sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Agent. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE IX

Force Majeure

Neither of the parties hereto shall be liable in damages to the other, except for the actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Agent from its obligations to make payments of amounts due hereunder.

ARTICLE X

Title to Gas

Agent warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XI

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of the Company and Agent and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the aggregations pools that Agent establishes under this Agreement.

ARTICLE XII

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XIII

Applicable Law and Regulations

This Agreement shall be construed under the laws of the Commonwealth of Kentucky and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law. In the event that any regulatory agency, including but not limited to the Kentucky Public Service Commission, does not approve, as filed or in a manner acceptable to Company, the transportation rate schedules SVGTS and SVAS, to which this Agreement relates, then this Agreement for Small Volume Aggregation Service associated with the Columbia Gas of Kentucky small volume gas transportation program shall be null and void and shall have no effect.

ARTICLE XIV

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Columbia Gas of Kentucky, Inc.
2001 Mercer Road
P.O. Box 14241
Lexington, Kentucky 40512-4241

Attention: Gas Transportation Services

Telephone notices and correspondence to the Company shall be directed to (859) 288-0257.

Fax notices to the Company shall be directed to (859) 288-0258.

Written notices and correspondence to Agent shall be addressed as follows:

Interstate Gas Supply
5020 Bradenton Ave.
Dublin OH 43017
Attention: Scott White

Telephone notices to Agent shall be directed to (614) 923.1000. Fax notices to Agent shall be directed to (614) 923.1010.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the day and year first above written.

ATTEST:

COLUMBIA GAS OF KENTUCKY, INC.

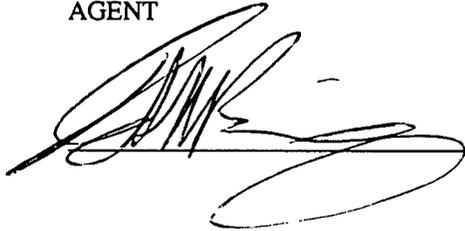


BY



ATTEST:

AGENT



BY



AGREEMENT FOR SMALL VOLUME AGGREGATION SERVICE

This agreement is made and entered into this 5th day of October, 2000, between Columbia Gas of Kentucky, Inc., a Kentucky corporation, 2001 Mercer Road, P. O. Box 14241, Lexington, KY 40512-4241, hereinafter "Company", and Kentucky Natural Gas Service, LLC, a corporation located at 160 Morgan Street, Versailles, Kentucky 40383, hereinafter "Agent."

WHEREAS, Agent has secured firm supplies of natural gas which it intends to supply and sell to natural gas customers located on the Company's system, all within the parameters established by the Company for its Small Volume Gas Transportation Service program as set forth in rate schedule Small Volume Aggregation Service ("SVAS").

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its citygate receipt points by Agent and to redeliver such gas supplies to Agent's aggregations of customers, all of whom have elected transportation service from the Company under its tariff Rate Schedule SVGTS.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations of customers and Agent hereby agrees to aggregate in accordance with the following terms and conditions for all aggregations served under this Agreement:

ARTICLE I

Definitions

For purposes of interpreting this Agreement, the following definitions shall apply:

1. Aggregation Service. Aggregation Service is a service provided by the Company that allows Agent to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the requirements of the transportation customer(s) that comprise the membership of the Agent's "aggregation pools," all in accordance with rules that the Company has established regarding delivery requirements, billing and payments, supplier performance requirements, and other similar requirements for participation as an agent in the Company's Small Volume Gas Transportation Service tariff.
2. The Aggregation. The aggregation referred to herein shall mean each aggregation pool that Agent establishes under this Agreement.
3. Customer(s). Customer(s) means a recipient of transportation service provided by the Company under its Rate Schedule SVGTS which secures its supply of gas from Agent. To be a Customer, the Company must have an obligation to supply the individual or entity under its general public utility obligation to serve, under a special contract, or under KRS § 278.475; and the Company must have an economical means of transporting gas to said individual or entity. All customers who participate in the Company's Customer Assistance Program ("CAP") will be served by a single Agent and are not eligible to contract with any Agent except that Agent serving the CAP pool. Agent agrees and understands that if a customer joins the CAP Program after signing up with the Agent, the customer: 1) will be removed from the Agent's customer pool and will be added to the CAP pool; and, 2) will be served by the Agent who was awarded the CAP Supplier Agreement. Columbia shall notify the Agent when any of the customers in the Agent's customer pool have joined CAP and thus, will be served as a member of the CAP pool. Agent shall not assess any penalty to a customer when a customer joins the CAP pool. For the purposes of Company's small volume gas transportation program ("the Program"), the Company shall provide to Agent a list of

customers who have agreed to take service from Agent and who have been verified by the Company through comparison with the Company's customer database.

ARTICLE II

Term

The term of this Agreement shall commence of the first day of the month after execution hereof and, subject to Agent's continued compliance with the requirements outlined herein for participation in this Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from month-to-month, unless terminated by either party, upon at least ninety (90) days advance written notice, or unless terminated pursuant to the provisions of Articles III, VI, and VIII of this Agreement. However, in no case shall any aggregation hereunder included in this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Agent, or except pursuant to the provisions of Articles III, VI, and VIII of this Agreement. Agent shall be required to incorporate sufficient flexibility into its agreements with its end-user customers that it serves, so that the operation of this provision will not contravene end-user customer's rights under those agreements. In the event this Agreement, in its entirety, is terminated in accordance with the procedures contained herein, and Agent no longer supplies natural gas to those customers hereunder aggregated, Agent's customers shall be given the option of either electing an alternate Agent, or returning to the Company's system supply. As stated in Article VIII, if this Agreement is terminated due to Agent's bankruptcy or non-delivery of supplies, then Agent's customers shall be immediately returned to Company's system supply.

ARTICLE III

Requirements for Program Participation

The standards for participation in the Program shall be the creditworthiness standards specified on Sheet 37a of the Company's tariff. Accordingly, in order to participate as an agent in the Company's program, Agent shall, upon request, provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Agent also agrees to allow the Company to conduct a credit investigation as to Agent's credit-worthiness and will pay a \$50 processing fee to the Company to cover the cost of a credit check. Further, if the Company determines that it is necessary, Agent agrees to maintain a cash deposit, a surety bond, an irrevocable letter of credit at a Company-approved bank of the Agent's choosing, or such other financial instrument, as the Company may require during the term of this Agreement in order to assure Agent's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Agent's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as customers are added to, or deleted from, Agent's aggregation pool. Agent agrees that, in the event it defaults on its obligations under this Agreement, Company shall have the right to use such cash deposit or the proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy Agent's obligations under this Agreement. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the gas supplies themselves, the costs of capacity, transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Agent, including, but not limited to, interstate pipeline capacity charges, imbalance charges, cash-out charges, pipeline penalty charges, reservation charges, and any other amounts owed to the Company or amounts for which the Company is or will be responsible related to Agent's participation in this Program.

In the event Agent elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this Agreement, it shall continue its obligations to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Agent shall comply with all applicable provisions of Company's tariff, including the Code of Conduct as set forth on Sheet No. 37 of Company's tariff. Said tariff provisions are incorporated herein by reference. Agent acknowledges that in its capacity as an agent in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner.

As a condition of this Agreement and Agent's participation in the Program, Agent authorizes Company to verify with interstate pipelines Agent's primary delivery point entitlements and deliveries of natural gas supplies as described in Company's tariff Rate Schedule SVAS.

Company will maintain a list of Agents who have met the Program financial and performance requirements. This list will be made available to customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in this aggregation service, Agent agrees to supply its aggregation customers' full service requirements for natural gas on both a daily and monthly basis. If Agent fails to deliver gas in accordance with its aggregation customers' full service requirements for natural gas, Company shall supply natural gas temporarily to the affected aggregation customers, and shall bill Agent the higher of either: 1) the fair market price for that period, or 2) the highest incremental cost of gas for that period that actually was paid by Company, including transportation and all other applicable charges. This gas will not be considered a credit for volumes delivered in the annual reconciliation.

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Company's aggregation service requires that Agent, as a participant in the Program, accept supply co-management responsibility as defined hereinafter, as a quid pro quo for its participation in this Agreement.

Agent agrees to deliver gas supplies into the Company's designated citygate receipt points on a daily basis, in accordance with the aggregate usage requirements of those customers that comprise each of the Agent's aggregation pools. For those transportation customers that are members of Agent's aggregation pools without daily measurement, Agent must agree to the Company's estimate of customer consumption as provided in Company's tariff and pay all charges assessed by the Company as provided in Company's tariff.

Company assigns, or offers for assignment, only that daily transportation and storage capacity necessary to serve the demand of the Agent's customer group on a day with design temperature. Agent must obtain its own capacity and supply to serve the incremental customer demand on days colder than design. Failure of Agent to deliver volumes on such days shall be grounds for expulsion.

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Agent shall also be required to balance on an annual basis its gas deliveries into the Company's system with the actual overall usage levels of each of Agent's customer aggregation pools, as specified in the Company's tariff.

Company will reconcile imbalances on an annual basis on each July 31st, for Agent, through determination of the difference between: (1) Agent's deliveries for the twelve-month period ended July 31st

and (2) the actual consumption of the Agent's aggregate Customer Group, adjusted for recognition of all adjustments applicable to a prior annual period ended July 31st. The reconciliation will include the unbilled portion of July. Company will complete the imbalance calculation within twenty (20) working days of the end of the annual period.

Agent will have the option to eliminate the imbalance through either: 1) payment from Company for excess deliveries or billing from Company for under-deliveries at the average for the twelve-month period ended July 31st of the mid-range of the Mid-Atlantic Citygate Columbia Gas price index reported for the first trading day of the month in *Gas Daily*, or 2) the exchange of gas with Company via a storage inventory transfer or delivery over the next thirty (30) days. Agent will specify in this Aggregation Service Agreement which option it has selected and the selected option will apply for the reconciliation made at the end of the twelve month period following the selection. Agent may change the option that it has selected once annually on August 1st of each calendar year. If Agent does not change its option as permitted herein, then the latest option selected by Agent shall apply.

Agent Selection: (circle one)

Option 1
(Cash Out)

Option 2
(Exchange) *han*

ARTICLE VI

Billing and Charges

The Company will provide Agent with each of its aggregation pools actual usage data for the aggregation pool's most recent billing period as customers are billed by the Company under Rate Schedule SVGTS.

Agent's transportation quantities shall be determined from the Company's "Monthly Summary Billing Report." The "Monthly Summary Billing Report" reflects customer's actual billed transport volumes as reported to Agent, as generated within the Company's revenue reporting system.

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If Agent has been assigned capacity and subsequently, is excluded from further participation in the Program, as provided in the Code of Conduct of the Company's tariff, or if this Agreement is terminated in accordance with Article VIII, then Company may elect to recall the capacity immediately. If the capacity is recalled, Agent shall remain responsible for the difference between the market value of the assigned capacity for the remainder of the year and the full demand charges.

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Payment

On a monthly basis for the term of the Agreement, Company shall make payment to Agent for the revenues billed for the Agent, subject to any deduction for the offsets or recoupments of any amounts owed to the Company as specified herein. The payment shall be at a two and one-half percent (2½%) discount of the total amount billed by the Company for Agent to its total Customer Group(s) for providing natural gas supplies to the Customer Group(s) for that month. Company shall calculate the amount due Agent by first adding together all of the bills for natural gas sold to customers in the Agent's aggregation pools and then multiplying that total amount by ninety-seven and one-half percent (97½%).

Company and Agent agree that all fees, costs, charges and penalties owed to the Company shall be offset and/or recouped from Agent's receivables check. The Company shall have the right to offset or recoup: 1) all amounts or costs that are incurred by Agent related to participation in this Program; 2) all amounts or costs owed directly to the Company; and, 3) all amounts or costs for which the Company is or will be responsible if not paid by Agent, including, but not limited to, capacity charges billed by interstate pipeline companies. In calculating the payment due Agent under this Agreement, said fees, costs, charges and/or penalties shall be deducted from the amount to be paid to Agent after the discount has been applied to the total amount billed by the Company.

Payment to Agent shall be made by the Company within thirty (30) days after the last unit billed in any billing cycle. Said monthly payment shall be made to Agent by the Company regardless of whether any particular customer(s) in Agent's Customer Group(s) pays their bill(s).

The Company reserves the right to adjust Agent's account with regard to payment for amounts billed by Company for Agent for up to two (2) years after the original billing date for any individual customer's bill at issue for accounting, meter reading, measurement accuracy or any other necessary adjustment.

ARTICLE VIII

Remedies

Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Agreement, if Company or Agent fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article VIII, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said thirty (30) day period.

Termination Rights – Non-Delivery or Bankruptcy. Notwithstanding the above paragraph entitled "Defaults" in Article VIII of this Agreement, in the event that Agent fails to deliver gas supplies in accordance with the Rules and Regulations of Company's tariff, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise.

In the event that Agent files a petition for relief under the federal bankruptcy laws, and this Agreement has not been terminated for non-delivery of gas supplies, then Agent shall cause to be filed with the federal bankruptcy court having jurisdiction a notice and take other action to declare its intentions with regard to assuming or rejecting this Agreement within 10 days after the order for relief. Failure to file and take the required action within 10 days after the order for relief will constitute notice that Agent intends to reject the Agreement.

If this Agreement is terminated due to non-delivery of supplies by Agent, or if Company is notified of Agent's intention to reject this Agreement in accordance with federal bankruptcy laws, then the Company shall notify Agent's customers of such termination or rejection and shall return all of Agent's customers to the Company's system supply. The Company shall also determine whether or not any capacity previously assigned to Agent must be returned to the Company, based upon Company's determination of its necessity for service to such customers.

Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payment and other remedies outlined in this Agreement and in the Company's tariffs for non-performance herein shall be Company and Agents' sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Agent. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE IX

Force Majeure

Neither of the parties hereto shall be liable in damages to the other, except for the actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Agent from its obligations to make payments of amounts due hereunder.

ARTICLE X

Title to Gas

Agent warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XI

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of the Company and Agent and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the aggregations pools that Agent establishes under this Agreement.

ARTICLE XII

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XIII

Applicable Law and Regulations

This Agreement shall be construed under the laws of the Commonwealth of Kentucky and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law. In the event that any regulatory agency, including but not limited to the Kentucky Public Service Commission, does not approve, as filed or in a manner acceptable to Company, the transportation rate schedules SVGTS and SVAS, to which this Agreement relates, then this Agreement for Small Volume Aggregation Service associated with the Columbia Gas of Kentucky small volume gas transportation program shall be null and void and shall have no effect.

ARTICLE XIV

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Columbia Gas of Kentucky, Inc.
2001 Mercer Road
P.O. Box 14241
Lexington, Kentucky 40512-4241

Attention: Gas Transportation Services

Telephone notices and correspondence to the Company shall be directed to (859) 288-0257.

Fax notices to the Company shall be directed to (859) 288-0258.

Written notices and correspondence to Agent shall be addressed as follows:

Kentucky Natural Gas Services, LLC
160 Morgan Street
Versailles, Kentucky 40383

Attention: Leonard K. Nave

Telephone notices to Agent shall be directed to (859) 873-5455. Fax notices to Agent shall be directed to (859) 873-9806.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the day and year first above written.

ATTEST:

COLUMBIA GAS OF KENTUCKY, INC.

Judy M. Cooper

BY: Joseph Kelly

ATTEST:

KENTUCKY NATURAL GAS SERVICES, LLC

Angela Hunt Hall

BY: Leonard K. Hare
Managing Member

**FORM OF SERVICE AGREEMENT
FOR SMALL VOLUME AGGREGATION SERVICE
RATE SCHEDULE**

This agreement is made and entered into this 5th day of October, 2000, between Columbia Gas of Kentucky, Inc., a Kentucky corporation, 2001 Mercer Road, P. O. Box 14241, Lexington, KY 40512-4241, hereinafter "Company", and Nicole Energy Services, INC., a(an) corporation located at 513 E. Rich Street, Ste 306, hereinafter "Agent."

Columbus, OH 43215

WHEREAS, Agent has secured firm supplies of natural gas which it intends to supply and sell to natural gas customers located on the Company's system, all within the parameters established by the Company for its Small Volume Gas Transportation Service program as set forth in rate schedule Small Volume Aggregation Service ("SVAS").

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its citygate receipt points by Agent and to redeliver such gas supplies to Agent's aggregations of customers, all of whom have elected transportation service from the Company under its tariff Rate Schedule SVGTS.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations of customers and Agent hereby agrees to aggregate in accordance with the following terms and conditions for all aggregations served under this Agreement:

ARTICLE I

Definitions

For purposes of interpreting this Agreement, the following definitions shall apply:

1. Aggregation Service. Aggregation Service is a service provided by the Company that allows Agent to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the requirements of the transportation customer(s) that comprise the membership of the Agent's "aggregation pools," all in accordance with rules that the Company has established regarding delivery requirements, billing and payments, supplier performance requirements, and other similar requirements for participation as an agent in the Company's Small Volume Gas Transportation Service tariff.
2. The Aggregation. The aggregation referred to herein shall mean each aggregation pool that Agent establishes under this Agreement.
3. Customer(s). Customer(s) means a recipient of transportation service provided by the Company under its Rate Schedule SVGTS which secures its supply of gas from Agent. To be a Customer, the Company must have an obligation to supply the individual or entity under its general public utility obligation to serve, under a special contract, or under KRS § 278.475; and the Company must have an economical means of transporting gas to said individual or entity. All customers who participate in the Company's Customer Assistance Program ("CAP") will be served by a single Agent and are not eligible to contract with any Agent except that Agent serving the CAP pool. Agent agrees and understands that if a customer joins the CAP Program after signing up with the Agent, the customer: 1) will be removed from the Agent's customer pool and will be added to the CAP pool; and, 2) will be served by the Agent who was awarded the CAP Supplier Agreement. Columbia shall notify the Agent when any of the customers in the Agent's customer pool have joined CAP and thus, will be served as a member of the CAP pool. Agent shall not assess any penalty to a customer when a customer joins the CAP pool. For the purposes of Company's small volume gas transportation program ("the Program"), the Company shall provide to Agent a list of

customers who have agreed to take service from Agent and who have been verified by the Company through comparison with the Company's customer database.

ARTICLE II

Term

The term of this Agreement shall commence on the first day of the month after execution hereof and, subject to Agent's continued compliance with the requirements outlined herein for participation in this Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from month-to-month, unless terminated by either party, upon at least ninety (90) days advance written notice, or unless terminated pursuant to the provisions of Articles III, VI, and VIII of this Agreement. However, in no case shall any aggregation hereunder included in this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Agent, or except pursuant to the provisions of Articles III, VI, and VIII of this Agreement. Agent shall be required to incorporate sufficient flexibility into its agreements with its end-user customers that it serves, so that the operation of this provision will not contravene end-user customer's rights under those agreements. In the event this Agreement, in its entirety, is terminated in accordance with the procedures contained herein, and Agent no longer supplies natural gas to those customers hereunder aggregated, Agent's customers shall be given the option of either electing an alternate Agent, or returning to the Company's system supply. As stated in Article VIII, if this Agreement is terminated due to Agent's bankruptcy or non-delivery of supplies, then Agent's customers shall be immediately returned to Company's system supply.

ARTICLE III

Requirements for Program Participation

The standards for participation in the Program shall be the creditworthiness standards specified on Sheet 37a of the Company's tariff. Accordingly, in order to participate as an agent in the Company's program, Agent shall, upon request, provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Agent also agrees to allow the Company to conduct a credit investigation as to Agent's credit-worthiness and will pay a \$50 processing fee to the Company to cover the cost of a credit check. Further, if the Company determines that it is necessary, Agent agrees to maintain a cash deposit, a surety bond, an irrevocable letter of credit at a Company-approved bank of the Agent's choosing, or such other financial instrument, as the Company may require during the term of this Agreement in order to assure Agent's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Agent's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as customers are added to, or deleted from, Agent's aggregation pool. Agent agrees that, in the event it defaults on its obligations under this Agreement, Company shall have the right to use such cash deposit or the proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy Agent's obligations under this Agreement. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the gas supplies themselves, the costs of capacity, transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Agent, including, but not limited to, interstate pipeline capacity charges, imbalance charges, cash-out charges, pipeline penalty charges, reservation charges, and any other amounts owed to the Company or amounts for which the Company is or will be responsible related to Agent's participation in this Program.

In the event Agent elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this Agreement, it shall continue its obligations to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Agent shall comply with all applicable provisions of Company's tariff, including the Code of Conduct as set forth on Sheet No. 37 of Company's tariff. Said tariff provisions are incorporated herein by reference. Agent acknowledges that in its capacity as an agent in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner.

As a condition of this Agreement and Agent's participation in the Program, Agent authorizes Company to verify with interstate pipelines Agent's primary delivery point entitlements and deliveries of natural gas supplies as described in Company's tariff Rate Schedule SVAS.

Company will maintain a list of Agents who have met the Program financial and performance requirements. This list will be made available to customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in this aggregation service, Agent agrees to supply its aggregation customers' full service requirements for natural gas on both a daily and monthly basis. If Agent fails to deliver gas in accordance with its aggregation customers' full service requirements for natural gas, Company shall supply natural gas temporarily to the affected aggregation customers, and shall bill Agent the higher of either: 1) the fair market price for that period, or 2) the highest incremental cost of gas for that period that actually was paid by Company, including transportation and all other applicable charges. This gas will not be considered a credit for volumes delivered in the annual reconciliation.

ARTICLE V

Supply Co-Management Defined

Company's aggregation service requires that Agent, as a participant in the Program, accept supply co-management responsibility as defined hereinafter, as a quid pro quo for its participation in this Agreement.

Agent agrees to deliver gas supplies into the Company's designated citygate receipt points on a daily basis, in accordance with the aggregate usage requirements of those customers that comprise each of the Agent's aggregation pools. For those transportation customers that are members of Agent's aggregation pools without daily measurement, Agent must agree to the Company's estimate of customer consumption as provided in Company's tariff and pay all charges assessed by the Company as provided in Company's tariff.

Company assigns, or offers for assignment, only that daily transportation and storage capacity necessary to serve the demand of the Agent's customer group on a day with design temperature. Agent must obtain its own capacity and supply to serve the incremental customer demand on days colder than design. Failure of Agent to deliver volumes on such days shall be grounds for expulsion.

Annual Reconciliation

Agent shall also be required to balance on an annual basis its gas deliveries into the Company's system with the actual overall usage levels of each of Agent's customer aggregation pools, as specified in the Company's tariff.

Company will reconcile imbalances on an annual basis on each July 31st, for Agent, through determination of the difference between: (1) Agent's deliveries for the twelve-month period ended July 31st

and (2) the actual consumption of the Agent's aggregate Customer Group, adjusted for recognition of all adjustments applicable to a prior annual period ended July 31st. The reconciliation will include the unbilled portion of July. Company will complete the imbalance calculation within twenty (20) working days of the end of the annual period.

Agent will have the option to eliminate the imbalance through either: 1) payment from Company for excess deliveries or billing from Company for under-deliveries at the average for the twelve-month period ended July 31st of the mid-range of the Mid-Atlantic Citygate Columbia Gas price index reported for the first trading day of the month in *Gas Daily*, or 2) the exchange of gas with Company via a storage inventory transfer or delivery over the next thirty (30) days. Agent will specify in this Aggregation Service Agreement which option it has selected and the selected option will apply for the reconciliation made at the end of the twelve month period following the selection. Agent may change the option that it has selected once annually on August 1st of each calendar year. If Agent does not change its option as permitted herein, then the latest option selected by Agent shall apply.

Agent Selection: (circle one)

Option 1
(Cash Out)

Option 2
(Exchange)

ARTICLE VI

Billing and Charges

The Company will provide Agent with each of its aggregation pools actual usage data for the aggregation pool's most recent billing period as customers are billed by the Company under Rate Schedule SVGTS.

Agent's transportation quantities shall be determined from the Company's "Monthly Summary Billing Report." The "Monthly Summary Billing Report" reflects customer's actual billed transport volumes as reported to Agent, as generated within the Company's revenue reporting system.

The billings and charges related to the daily balancing service provided by the Company are specified in the Company's tariff.

If Agent has been assigned capacity and subsequently, is excluded from further participation in the Program, as provided in the Code of Conduct of the Company's tariff, or if this Agreement is terminated in accordance with Article VIII, then Company may elect to recall the capacity immediately. If the capacity is recalled, Agent shall remain responsible for the difference between the market value of the assigned capacity for the remainder of the year and the full demand charges.

ARTICLE VII

Payment

On a monthly basis for the term of the Agreement, Company shall make payment to Agent for the revenues billed for the Agent, subject to any deduction for the offsets or recoupments of any amounts owed to the Company as specified herein. The payment shall be at a two and one-half percent (2½%) discount of the total amount billed by the Company for Agent to its total Customer Group(s) for providing natural gas supplies to the Customer Group(s) for that month. Company shall calculate the amount due Agent by first adding together all of the bills for natural gas sold to customers in the Agent's aggregation pools and then multiplying that total amount by ninety-seven and one-half percent (97½%).

Company and Agent agree that all fees, costs, charges and penalties owed to the Company shall be offset and/or recouped from Agent's receivables check. The Company shall have the right to offset or recoup: 1) all amounts or costs that are incurred by Agent related to participation in this Program; 2) all amounts or costs owed directly to the Company; and, 3) all amounts or costs for which the Company is or will be responsible if not paid by Agent, including, but not limited to, capacity charges billed by interstate pipeline companies. In calculating the payment due Agent under this Agreement, said fees, costs, charges and/or penalties shall be deducted from the amount to be paid to Agent after the discount has been applied to the total amount billed by the Company.

Payment to Agent shall be made by the Company within thirty (30) days after the last unit billed in any billing cycle. Said monthly payment shall be made to Agent by the Company regardless of whether any particular customer(s) in Agent's Customer Group(s) pays their bill(s).

The Company reserves the right to adjust Agent's account with regard to payment for amounts billed by Company for Agent for up to two (2) years after the original billing date for any individual customer's bill at issue for accounting, meter reading, measurement accuracy or any other necessary adjustment.

ARTICLE VIII

Remedies

Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Agreement, if Company or Agent fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article VIII, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said thirty (30) day period.

Termination Rights – Non-Delivery or Bankruptcy. Notwithstanding the above paragraph entitled "Defaults" in Article VIII of this Agreement, in the event that Agent fails to deliver gas supplies in accordance with the Rules and Regulations of Company's tariff, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise.

In the event that Agent files a petition for relief under the federal bankruptcy laws, and this Agreement has not been terminated for non-delivery of gas supplies, then Agent shall cause to be filed with the federal bankruptcy court having jurisdiction a notice and take other action to declare its intentions with regard to assuming or rejecting this Agreement within 10 days after the order for relief. Failure to file and take the required action within 10 days after the order for relief will constitute notice that Agent intends to reject the Agreement.

If this Agreement is terminated due to non-delivery of supplies by Agent, or if Company is notified of Agent's intention to reject this Agreement in accordance with federal bankruptcy laws, then the Company shall notify Agent's customers of such termination or rejection and shall return all of Agent's customers to the Company's system supply. The Company shall also determine whether or not any capacity previously assigned to Agent must be returned to the Company, based upon Company's determination of its necessity for service to such customers.

Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payment and other remedies outlined in this Agreement and in the Company's tariffs for non-performance herein shall be Company and Agents' sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Agent. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE IX

Force Majeure

Neither of the parties hereto shall be liable in damages to the other, except for the actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Agent from its obligations to make payments of amounts due hereunder.

ARTICLE X

Title to Gas

Agent warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XI

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of the Company and Agent and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the aggregations pools that Agent establishes under this Agreement.

ARTICLE XII

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XIII

Applicable Law and Regulations

This Agreement shall be construed under the laws of the Commonwealth of Kentucky and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law. In the event that any regulatory agency, including but not limited to the Kentucky Public Service Commission, does not approve, as filed or in a manner acceptable to Company, the transportation rate schedules SVGTS and SVAS, to which this Agreement relates, then this Agreement for Small Volume Aggregation Service associated with the Columbia Gas of Kentucky small volume gas transportation program shall be null and void and shall have no effect.

ARTICLE XIV

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Columbia Gas of Kentucky, Inc.
2001 Mercer Road
P.O. Box 14241
Lexington, Kentucky 40512-4241

Attention: Gas Transportation Services

Telephone notices and correspondence to the Company shall be directed to (859) 288-0257.

Fax notices to the Company shall be directed to (859) 288-0258.

Written notices and correspondence to Agent shall be addressed as follows:

Nicole Energy Services, INC

Attn: Kim Gardner

52 Pine Creek RD, Suite 202

Wexford, PA 15090

Telephone notices to Agent shall be directed to ~~(412) 369-4777~~. Fax notices to Agent shall be directed to ~~(412) 369-4497~~.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the day and year first above written.

ATTEST:

COLUMBIA GAS OF KENTUCKY, INC.

Judy M Cooper

BY Joe McKelley

ATTEST:

AGENT

Nicole Energy Services, INC

Constance Bradley witness

BY Freddie S. Johnson, President

**FORM OF SERVICE AGREEMENT
FOR SMALL VOLUME AGGREGATION SERVICE
RATE SCHEDULE**

This agreement is made and entered into this 13 day of September, 2000, between Columbia Gas of Kentucky, Inc., a Kentucky corporation, 2001 Mercer Road, P. O. Box 14241, Lexington, KY 40512-4241, hereinafter "Company", and STAND ENERGY CORPORATION, a(an) corporation located at 1077 Celestial Dr, Suite 110, Cincinnati, OH 45230, hereinafter "Agent."

WHEREAS, Agent has secured firm supplies of natural gas which it intends to supply and sell to natural gas customers located on the Company's system, all within the parameters established by the Company for its Small Volume Gas Transportation Service program as set forth in rate schedule Small Volume Aggregation Service ("SVAS").

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its citygate receipt points by Agent and to redeliver such gas supplies to Agent's aggregations of customers, all of whom have elected transportation service from the Company under its tariff Rate Schedule SVGTS.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations of customers and Agent hereby agrees to aggregate in accordance with the following terms and conditions for all aggregations served under this Agreement:

ARTICLE I

Definitions

For purposes of interpreting this Agreement, the following definitions shall apply:

1. Aggregation Service. Aggregation Service is a service provided by the Company that allows Agent to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the requirements of the transportation customer(s) that comprise the membership of the Agent's "aggregation pools," all in accordance with rules that the Company has established regarding delivery requirements, billing and payments, supplier performance requirements, and other similar requirements for participation as an agent in the Company's Small Volume Gas Transportation Service tariff.
2. The Aggregation. The aggregation referred to herein shall mean each aggregation pool that Agent establishes under this Agreement.
3. Customer(s). Customer(s) means a recipient of transportation service provided by the Company under its Rate Schedule SVGTS which secures its supply of gas from Agent. To be a Customer, the Company must have an obligation to supply the individual or entity under its general public utility obligation to serve, under a special contract, or under KRS § 278.475; and the Company must have an economical means of transporting gas to said individual or entity. All customers who participate in the Company's Customer Assistance Program ("CAP") will be served by a single Agent and are not eligible to contract with any Agent except that Agent serving the CAP pool. Agent agrees and understands that if a customer joins the CAP Program after signing up with the Agent, the customer: 1) will be removed from the Agent's customer pool and will be added to the CAP pool; and, 2) will be served by the Agent who was awarded the CAP Supplier Agreement. Columbia shall notify the Agent when any of the customers in the Agent's customer pool have joined CAP and thus, will be served as a member of the CAP pool. Agent shall not assess any penalty to a customer when a customer joins the CAP pool. For the purposes of Company's small volume gas transportation program ("the Program"), the Company shall provide to Agent a list of

customers who have agreed to take service from Agent and who have been verified by the Company through comparison with the Company's customer database.

ARTICLE II

Term

The term of this Agreement shall commence of the first day of the month after execution hereof and, subject to Agent's continued compliance with the requirements outlined herein for participation in this Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from month-to-month, unless terminated by either party, upon at least ninety (90) days advance written notice, or unless terminated pursuant to the provisions of Articles III, VI, and VIII of this Agreement. However, in no case shall any aggregation hereunder included in this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Agent, or except pursuant to the provisions of Articles III, VI, and VIII of this Agreement. Agent shall be required to incorporate sufficient flexibility into its agreements with its end-user customers that it serves, so that the operation of this provision will not contravene end-user customer's rights under those agreements. In the event this Agreement, in its entirety, is terminated in accordance with the procedures contained herein, and Agent no longer supplies natural gas to those customers hereunder aggregated, Agent's customers shall be given the option of either electing an alternate Agent, or returning to the Company's system supply. As stated in Article VIII, if this Agreement is terminated due to Agent's bankruptcy or non-delivery of supplies, then Agent's customers shall be immediately returned to Company's system supply.

ARTICLE III

Requirements for Program Participation

The standards for participation in the Program shall be the creditworthiness standards specified on Sheet 37a of the Company's tariff. Accordingly, in order to participate as an agent in the Company's program, Agent shall, upon request, provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Agent also agrees to allow the Company to conduct a credit investigation as to Agent's credit-worthiness and will pay a \$50 processing fee to the Company to cover the cost of a credit check. Further, if the Company determines that it is necessary, Agent agrees to maintain a cash deposit, a surety bond, an irrevocable letter of credit at a Company-approved bank of the Agent's choosing, or such other financial instrument, as the Company may require during the term of this Agreement in order to assure Agent's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Agent's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as customers are added to, or deleted from, Agent's aggregation pool. Agent agrees that, in the event it defaults on its obligations under this Agreement, Company shall have the right to use such cash deposit or the proceeds from such bond, irrevocable letter of credit, or other financial instrument to satisfy Agent's obligations under this Agreement. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the gas supplies themselves, the costs of capacity, transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Agent, including, but not limited to, interstate pipeline capacity charges, imbalance charges, cash-out charges, pipeline penalty charges, reservation charges, and any other amounts owed to the Company or amounts for which the Company is or will be responsible related to Agent's participation in this Program.

In the event Agent elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this Agreement, it shall continue its obligations to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Agent shall comply with all applicable provisions of Company's tariff, including the Code of Conduct as set forth on Sheet No. 37 of Company's tariff. Said tariff provisions are incorporated herein by reference. Agent acknowledges that in its capacity as an agent in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner.

As a condition of this Agreement and Agent's participation in the Program, Agent authorizes Company to verify with interstate pipelines Agent's primary delivery point entitlements and deliveries of natural gas supplies as described in Company's tariff Rate Schedule SVAS.

Company will maintain a list of Agents who have met the Program financial and performance requirements. This list will be made available to customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in this aggregation service, Agent agrees to supply its aggregation customers' full service requirements for natural gas on both a daily and monthly basis. If Agent fails to deliver gas in accordance with its aggregation customers' full service requirements for natural gas, Company shall supply natural gas temporarily to the affected aggregation customers, and shall bill Agent the higher of either: 1) the fair market price for that period, or 2) the highest incremental cost of gas for that period that actually was paid by Company, including transportation and all other applicable charges. This gas will not be considered a credit for volumes delivered in the annual reconciliation.

ARTICLE V

Supply Co-Management Defined

Company's aggregation service requires that Agent, as a participant in the Program, accept supply co-management responsibility as defined hereinafter, as a quid pro quo for its participation in this Agreement.

Agent agrees to deliver gas supplies into the Company's designated citygate receipt points on a daily basis, in accordance with the aggregate usage requirements of those customers that comprise each of the Agent's aggregation pools. For those transportation customers that are members of Agent's aggregation pools without daily measurement, Agent must agree to the Company's estimate of customer consumption as provided in Company's tariff and pay all charges assessed by the Company as provided in Company's tariff.

Company assigns, or offers for assignment, only that daily transportation and storage capacity necessary to serve the demand of the Agent's customer group on a day with design temperature. Agent must obtain its own capacity and supply to serve the incremental customer demand on days colder than design. Failure of Agent to deliver volumes on such days shall be grounds for expulsion.

Annual Reconciliation

Agent shall also be required to balance on an annual basis its gas deliveries into the Company's system with the actual overall usage levels of each of Agent's customer aggregation pools, as specified in the Company's tariff.

Company will reconcile imbalances on an annual basis on each July 31st, for Agent, through determination of the difference between: (1) Agent's deliveries for the twelve-month period ended July 31st

and (2) the actual consumption of the Agent's aggregate Customer Group, adjusted for recognition of all adjustments applicable to a prior annual period ended July 31st. The reconciliation will include the unbilled portion of July. Company will complete the imbalance calculation within twenty (20) working days of the end of the annual period.

Agent will have the option to eliminate the imbalance through either: 1) payment from Company for excess deliveries or billing from Company for under-deliveries at the average for the twelve-month period ended July 31st of the mid-range of the Mid-Atlantic Citygate Columbia Gas price index reported for the first trading day of the month in *Gas Daily*, or 2) the exchange of gas with Company via a storage inventory transfer or delivery over the next thirty (30) days. Agent will specify in this Aggregation Service Agreement which option it has selected and the selected option will apply for the reconciliation made at the end of the twelve month period following the selection. Agent may change the option that it has selected once annually on August 1st of each calendar year. If Agent does not change its option as permitted herein, then the latest option selected by Agent shall apply.

Agent Selection: (circle one)

Option 1
(Cash Out)

Option 2
(Exchange)

ARTICLE VI

Billing and Charges

The Company will provide Agent with each of its aggregation pools actual usage data for the aggregation pool's most recent billing period as customers are billed by the Company under Rate Schedule SVGTS.

Agent's transportation quantities shall be determined from the Company's "Monthly Summary Billing Report." The "Monthly Summary Billing Report" reflects customer's actual billed transport volumes as reported to Agent, as generated within the Company's revenue reporting system.

The billings and charges related to the daily balancing service provided by the Company are specified in the Company's tariff.

If Agent has been assigned capacity and subsequently, is excluded from further participation in the Program, as provided in the Code of Conduct of the Company's tariff, or if this Agreement is terminated in accordance with Article VIII, then Company may elect to recall the capacity immediately. If the capacity is recalled, Agent shall remain responsible for the difference between the market value of the assigned capacity for the remainder of the year and the full demand charges.

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Payment

On a monthly basis for the term of the Agreement, Company shall make payment to Agent for the revenues billed for the Agent, subject to any deduction for the offsets or recoupments of any amounts owed to the Company as specified herein. The payment shall be at a two and one-half percent (2½%) discount of the total amount billed by the Company for Agent to its total Customer Group(s) for providing natural gas supplies to the Customer Group(s) for that month. Company shall calculate the amount due Agent by first adding together all of the bills for natural gas sold to customers in the Agent's aggregation pools and then multiplying that total amount by ninety-seven and one-half percent (97½%).

Company and Agent agree that all fees, costs, charges and penalties owed to the Company shall be offset and/or recouped from Agent's receivables check. The Company shall have the right to offset or recoup: 1) all amounts or costs that are incurred by Agent related to participation in this Program; 2) all amounts or costs owed directly to the Company; and, 3) all amounts or costs for which the Company is or will be responsible if not paid by Agent, including, but not limited to, capacity charges billed by interstate pipeline companies. In calculating the payment due Agent under this Agreement, said fees, costs, charges and/or penalties shall be deducted from the amount to be paid to Agent after the discount has been applied to the total amount billed by the Company.

Payment to Agent shall be made by the Company within thirty (30) days after the last unit billed in any billing cycle. Said monthly payment shall be made to Agent by the Company regardless of whether any particular customer(s) in Agent's Customer Group(s) pays their bill(s).

The Company reserves the right to adjust Agent's account with regard to payment for amounts billed by Company for Agent for up to two (2) years after the original billing date for any individual customer's bill at issue for accounting, meter reading, measurement accuracy or any other necessary adjustment.

ARTICLE VIII

Remedies

Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Agreement, if Company or Agent fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article VIII, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said thirty (30) day period.

Termination Rights – Non-Delivery or Bankruptcy. Notwithstanding the above paragraph entitled "Defaults" in Article VIII of this Agreement, in the event that Agent fails to deliver gas supplies in accordance with the Rules and Regulations of Company's tariff, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise.

In the event that Agent declares bankruptcy during the term of this Agreement, then Company shall have the right to terminate this Agreement immediately upon written notice to Agent, by facsimile, electronic mail or otherwise, subject only to any restrictions or requirements that may be imposed by the applicable provisions of the federal bankruptcy code.

Subject to the effect of any applicable provisions of the federal bankruptcy code, if this Agreement is terminated due to non-delivery of supplies by Agent, or due to the bankruptcy of Agent, then the Company shall notify Agent's customers of such termination and immediately shall return all of Agent's customers to the Company's system supply. The Company shall also determine whether or not any capacity previously assigned to Agent must be returned to the Company, based upon Company's determination of its necessity for service to such customers.

Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payment and other remedies outlined in this Agreement and in the Company's tariffs for non-

performance herein shall be Company and Agents' sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Agent. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE IX

Force Majeure

Neither of the parties hereto shall be liable in damages to the other, except for the actual delivered costs, plus shrinkage, of replacement supplies and flow through of penalty charges, for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or lines of pipe, gas curtailment imposed by interstate or intrastate pipelines, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Failure to prevent or settle any strike or strikes shall not be considered to be a matter within the control of the party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Agent from its obligations to make payments of amounts due hereunder.

ARTICLE X

Title to Gas

Agent warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XI

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of the Company and Agent and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the aggregations pools that Agent establishes under this Agreement.

ARTICLE XII

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XIII

Applicable Law and Regulations

This Agreement shall be construed under the laws of the Commonwealth of Kentucky and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law. In the event that any regulatory agency, including but not limited to the Kentucky Public Service Commission, does not approve, as filed or in a manner acceptable to Company, the transportation rate schedules SVGTS and SVAS, to which this Agreement relates, then this Agreement for Small Volume Aggregation Service associated with the Columbia Gas of Kentucky small volume gas transportation program shall be null and void and shall have no effect.

ARTICLE XIV

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Columbia Gas of Kentucky, Inc.
2001 Mercer Road
P.O. Box 14241
Lexington, Kentucky 40512-4241

Attention: Gas Transportation Services

Telephone notices and correspondence to the Company shall be directed to (859) 288-0257.

Fax notices to the Company shall be directed to (859) 288-0258.

Written notices and correspondence to Agent shall be addressed as follows:

STAND ENERGY CORPORATION

1077 CELESTIAL STREET, SUITE 110

Cincinnati, Ohio 43130

ATTN: STACEE DOUER

Telephone notices to Agent shall be directed to ⁵¹³~~(513)~~ 621-1113. Fax notices to Agent shall be directed to (513) 621-3773.

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the day and year first above written.

ATTEST:

COLUMBIA GAS OF KENTUCKY, INC.

Cynthia Berken

BY

Joseph W. Kelly

ATTEST:

AGENT

Mark Howard 9-13-00

BY

Judith A. Phillips, President
9/13/00

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-165

FILED

MAY 10 2000

**PUBLIC SERVICE
COMMISSION**

RE: COLUMBIA GAS OF KENTUCK, INC.

Pursuant to notice duly given, the above styled matter came to be heard April 25, 2000, at 9:00 a.m. in the hearing room of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; The Honorable B. J. Helton presiding.

C O P Y

VIVIAN A. LEWIS
COURT REPORTER - PUBLIC STENOGRAPHER
101 COUNTRY LANE
FRANKFORT, KENTUCKY 40601
(502) 695-1373

BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-165

RE: COLUMBIA GAS OF KENTUCKY, INC.

APPEARANCES:

Hon. B. J. Helton
Chairman
PUBLIC SERVICE COMMISSION

Hon. Edward Holmes
Vice-Chairman
PUBLIC SERVICE COMMISSION

Hon. Gary Gillis
Commissioner
PUBLIC SERVICE COMMISSION

Hon. J. R. Goff
Legal Counsel
PUBLIC SERVICE COMMISSION

Hon. Richard S. Taylor
Capital Link Consultants
325 High Street
Frankfort, Kentucky 40601
Legal Counsel
COLUMBIA GAS OF KENTUCKY, INC.

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P. O. Box 117
Columbus, Ohio 43216-0117
Legal Counsel
COLUMBIA GAS OF KENTUCKY, INC.

Hon. John M. Dosker
1077 Celestial Street, Suite 110
Cincinnati, Ohio 45202
Legal Counsel
STAND ENERGY CORPORATION

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1 CHAIRMAN HELTON:

2 We are here in the matter of the tariff filing of
3 Columbia Gas of Kentucky to implement a small
4 volume gas transportation service, to continue its
5 gas cost incentive mechanism and to continue its
6 customer assistance program. The rehearing of
7 this case which is Case Number 99-165. Could we
8 have appearances of the parties please?

9 MR. TAYLOR:

10 Madam Chairman and members of the Commission,
11 Richard S. Taylor, 315 High Street, Frankfort,
12 Kentucky 40601, Stephen B. Seiple, P. O. Box 117,
13 Columbus, Ohio 43216-0117.

14 MR. BORCHERT:

15 Madam Chairman, on behalf of Stand Energy Corp.,
16 I'm Jerry Borchert, address is 1077 Celestial
17 Street, Cincinnati, Ohio. Joining me shortly will
18 be our attorney, John Dosker, of the same address.

19 MR. GOFF:

20 James R. Goff for the Commission.

21 MR. BROOKS:

22 Douglas Brooks, appearing for LG&E Energy Corp
23 subsidiary company, my address is Post Office Box
24 32010, Louisville, Kentucky 40232.

1 CHAIRMAN HELTON:

2 The Attorney General is present, do you wish to
3 enter an appearance?

4 MS. CHEUVRONT:

5 No.

6 CHAIRMAN HELTON:

7 Are there any preliminary matters? Call your
8 first witness.

9 MR. SEIPLE:

10 Columbia has two witnesses this morning, the first
11 is Mr. Scott Phelps.

12 (WITNESS DULY SWORN)

13

14 The witness, SCOTT PHELPS, having first been duly
15 sworn, testified as follows:

16

DIRECT EXAMINATION

17 BY MR. SEIPLE:

18 Q Would you please state your name and spell it for
19 the record?

20 A My name is Scott Phelps, the last name is
21 P-h-e-l-p-s.

22 Q And by whom are you employed?

23 A Columbia Gas of Kentucky.

24 Q And you have prefiled testimony in this case on

1 March 16, 2000, is that correct?

2 A That's correct.

3 Q Do you have any revisions to that testimony?

4 A No, I do not.

5 Q If I were to ask you the questions contained
6 in that testimony, would your answers be the
7 same today?

8 A Yes.

9 MR. SEIPLE:

10 I'd like to move--I would like to have
11 that testimony marked as Columbia
12 Rehearing Exhibit Number 1, move its
13 admission and make Mr. Phelps available
14 for cross-examination.

15 CHAIRMAN HELTON:

16 So ordered.

17 (EXHIBIT SO MARKED: Columbia Rehearing Exhibit
18 No. 1)

19 CHAIRMAN HELTON:

20 Mr. Dosker, do you have questions for this witness
21 or would you like for us to come back to you?

22 MR. DOSKER:

23 No questions, Your Honor.

24

1 CHAIRMAN HELTON:

2 Thank you. Mr. Goff.

3

4

CROSS EXAMINATION

5 BY MR. GOFF:

6 Q Mr. Phelps, referring to your prefiled testimony
7 of April 4, in response to the Commission's Data
8 Request of April 4, in Item 2 of that testimony
9 you stated that Columbia would have--and this is
10 at the bottom of the page--Columbia will have to
11 compute the dollars associated with each pipeline
12 contract independently based on whether it is used
13 for the sales customers or is stranded by
14 customers converting to choice. Could you
15 describe the criteria that Columbia would employ
16 in determining whether the capacity in a
17 particular contract is used by sales customers or
18 is stranded by cost customers?

19 A Yes, I will. It is more a function--it is
20 not a function of so much as trying to figure
21 out which pipeline is serving molecules
22 exactly to different customers as much as it
23 is coming up with a process to identify
24 stranded contracts and reduce those from the

1 total. The first step is to recognize that
2 there is capaci--two types of capacity that
3 we are working with: Capacity that comes--
4 that delivers gas to the city gate, Columbia
5 Gas of Kentucky, and capacity that is
6 upstream of those contracts, say, bringing
7 gas from Louisiana to Columbia Transmission
8 somewhere in Kentucky, delivering to those
9 contracts that deliver to our city gate. The
10 contracts that have the possibility of
11 terminating during the program are city gate
12 delivered contracts. And so, what this is
13 trying to discuss is the fact that we will
14 start out with all of our contracts and then
15 when contracts have the potential to be
16 terminated, if choice has experienced enough
17 participation at that time, that contract
18 will be terminated. In our formulas and in
19 the example, I guess it is not this one but
20 in number three that follows, we show that
21 the--in the example of January 2002, for
22 example, there are three contracts that can
23 terminate. Those are reviewed against the
24 choice participation and it is found that all

1 of those could be terminated and would have
2 been and there is still stranded capacity
3 after that. The stranded capacity that is
4 after that is, in that example, Columbia Gas
5 Transmission FT and Columbia Gas Transmission
6 SST combined with the storage, the storage
7 transportation service. We are referring to
8 all of those types of city gate services.
9 So, what we have identified is the capacity
10 that is remaining and stranding the remaining
11 percentage that is needed to cover the total
12 stranded cost--the total stranded capacity, a
13 ratio of the Columbia Gas Transmission FTS,
14 SST and FSS. Again, it is not an
15 identification of--this pipeline is for
16 choice customers and this pipeline is for
17 retail sales customers as it--as much as it
18 is a formula to calculate the cost. The
19 second type of capacity is the upstream
20 capacity. None of those are able to
21 terminate during the term of the program and
22 the approach there, as shown in Example 3,
23 answer to Question 3, is the--simply the
24 ratio of choice participants to the total.

1 In that example it is a little over 24%. So,
2 24% of the upstream capacity would be
3 stranded. There is one other item I guess I
4 should mention, as long as we are talking
5 about the example, which highlights one of
6 the contracts, and that is the local gas.
7 The local gas is not stranded and we believe
8 can't be stranded at this time because there
9 is really no capacity related to that. It is
10 a gas purchase agreement that goes through
11 2004. So, that contract is being reserved
12 for the retail sales customers. And you will
13 see that 7,100 dekatherms is deducted before
14 the TECO FT stranded capacity is determined.

15 Q That global contract is strictly for
16 commodity costs, is that--

17 A The local?

18 Q Yes.

19 A Yes, it is all commodity cost.

20 Q Now, Mr. Phelps, with regards to the
21 potential allocation of the--of at least a
22 portion of the revenues generated from the
23 gas cost incentive mechanisms, has Columbia
24 considered allocating at least some portion

1 of those revenues on the same basis, i.e., a
2 percentage as will be applied in the
3 allocation of stranded cost?

4 A Could you expand on that a little bit?

5 Q Would it be appropriate to apply the same
6 ratio that you have described to these--to
7 the capacity to allocate the revenue?

8 A I'm not sure that there is a similar logic.
9 I mean, the logic of the capacity is you can
10 see what the participants are using and what
11 they have stranded. If anything, off-system
12 sales revenues are in different--they live in
13 different places in terms of what they are
14 related to. If--I can't see the connection,
15 I guess, between a revenue stream and the
16 stranded capacity that is limited or is
17 calculated based on choice participation.
18 And, as far as I know, to answer your
19 question, I haven't been involved in anything
20 considering that.

21 Q Referring you to Item 4 of your response,
22 your response indicates that two states,
23 Maryland and Pennsylvania, the gas cost
24 incentive mechanisms predate the unbundling

1 programs and were not built into the choice
2 programs in those jurisdictions; is that
3 correct?

4 A Yes.

5 Q Why would not a similar treatment be
6 appropriate here in Kentucky?

7 A In both cases Columbia Gas of Maryland and
8 Columbia Gas of Pennsylvania is retaining
9 sharing percentages just as they did prior to
10 choice.

11 Q They are not allocating the revenues to
12 stranded costs?

13 A Well, in Maryland which is, as I say, quite a
14 small program, I believe it is still referred
15 to as a pilot, the--there is a mandatory
16 assignment of capacity, there is low
17 participation as a result and there is no
18 stranded cost as a result. So, there is not
19 another--there is not another pot requiring
20 funding. In Pennsylvania the program was
21 designed around a combination of surcharges
22 and mandatory assignment, or what we have
23 called Phase 2 here in Kentucky. So, in both
24 of those cases the stranded cost had to be

1 dealt with and was. We feel that the
2 collaborative came up with a better approach
3 here in Kentucky than in those two. But you
4 will see in all three stranded cost are
5 covered, it is just in different ways.

6 Q The--refer you to--in the Commission's April
7 4 data request Columbia was asked to describe
8 all capacity release and all system sales
9 activities in which it no longer has the
10 incentive to engage, absence the restoration
11 of the incentive sharing mechanism. I
12 believe you responded that Columbia will no
13 longer have the financial incentive to engage
14 in the incentive sharing mechanisms related
15 to capacity release in off-system sales. Did
16 Columbia engage in capacity to release
17 activities before its incentive sharing
18 mechanisms were approved?

19 A We started participating in capacity release
20 transactions in 1993, which was before the
21 incentive program was approved.

22 Q What was Columbia's incentive to release
23 capacity at that time?

24 A It was not financial. It was an opportunity

1 afforded to us by the FERC and we felt we
2 should implement it.

3 CHAIRMAN HELTON:

4 Excuse me, but if it wasn't financial
5 why would you do that?

6 A It wasn't--there was no financial incentive
7 for Columbia at that time. It was a
8 financial incentive for our customers for us
9 to do it.

10 Q Mr. Seiple in--Mr. Phelps, in the Order
11 entered in this case the Commission stated
12 that the Commission's Order of January 27
13 shall be clarified to state that Columbia
14 will not be prohibited from recovering all
15 prudent program costs that could not be
16 mitigated. Now, in the response to the April
17 4 Order in Number 1, should the Commission
18 interpret the response to mean that in the
19 absence of incentive sharing mechanisms
20 Columbia will not engage in capacity release
21 or make off-system sales in order to off set
22 or mitigate its stranded cost? In other
23 words, the Commission has said that you may
24 recover these prudent program costs, but your

1 response apparently indicates that absent the
2 incentive sharing mechanisms you don't feel
3 that you will engage in this; is that
4 correct?

5 A I don't think I said that in Number 1. I
6 think that there is a difference in any
7 business that has a financial incentive
8 versus one that doesn't, and the results are
9 different.

10 Q Do you--

11 A I'd like to expand on the capacity release
12 question you gave me and note that the vast
13 majority of the release revenue in the model
14 is a direct result of the Choice Program in
15 the stranded cost, or the stranded capacity
16 that we are trying to mitigate. In fact, our
17 calculation using the model is like--I
18 answered this in an earlier question--I think
19 it was about 83% of the revenue in our model
20 is a direct result of the Choice Program.
21 And we felt it was situated in such a way
22 that it made more sense that that should go
23 against the stranded cost.

24 Q It was interpreted that your response is that

1 with these incentives you would make, shall
2 we say, a stronger effort, devote more
3 resources and information to these off-system
4 sales and capacity release to mitigate these
5 stranded costs. But without that will you
6 still put forth that effort, will you still
7 try to push the capacity release, the off
8 sales system--the off-system sales to offset
9 these stranded costs?

10 A No, I don't believe we will both--we will
11 have those two tools to use and I think the
12 difference will come in our--what we can get
13 done in a day in terms of that versus the
14 other important tasks, such as procuring the
15 gas and making sure it gets to the right
16 place. I just think it will be, particularly
17 with off-system sales, it will be a reduced
18 focus. I think priorities will start to
19 shift, I just think that is a natural
20 occurrence. I don't believe that we would
21 stop doing them all together, no.

22 Q In your response to--or Item 2 of that same
23 request you discuss how the denial of the use
24 of expiring contracts as a revenue

1 opportunity causes Columbia to no longer be
2 able to use the method it originally used to
3 calculate the stranded cost. Can you
4 describe how that method--how the method that
5 was originally used in the financial model
6 differs from the method you described in that
7 response that results in stranded cost
8 decreasing from, I think, 31 1/2 million to
9 23.4 million?

10 A Yes, could you repeat which question you are
11 looking at?

12 Q Okay. This relates to Item 2 of the response
13 of April 14.

14 A The original filings locked in a unit cost
15 for demand charges regardless of the upcoming
16 termination of contracts. And when the
17 Commission's Order came out it really changed
18 the whole approach of looking at the cost.
19 Because when everything was still in the
20 equations you weren't--the way I think of it
21 is the stranded costs were still on both
22 sides of the equation, both sides of the
23 equal sign. And when the--when we were
24 ordered not to include terminated cost

1 contracts or not to act like they still
2 existed in the demand cost part of the GCA,
3 we had to--once the terminated contracts were
4 terminated they fell out of both sides of the
5 equation. And I think when--in the
6 Commission's Order on the attachment or the
7 table, they were not--when a contract is
8 terminated the stranded costs disappear,
9 based on the Commission's Order. So--and yet
10 the 31 million or so didn't change in the
11 Commission's table where we should have taken
12 the terminated dollars and reduced it from
13 that 31 to get the 23 or the 24, whichever,
14 the number you are referring to. Did you
15 under--is that clear? I mean, it is fairly
16 complex but I'm trying to point out that we
17 took it out of one side but we didn't take
18 out of the other side and we should have.
19 And so, when we came back with a different--
20 with the interpretation of how to do that,
21 then the terminated contracts cease creating
22 stranded cost. So, it has to be reduced from
23 31. Just to follow up on that, as a result
24 the stranded cost in the model projected are

1 fully covered now. In fact, there is an
2 expected slight over-recovery projected. So,
3 it is not the minus three million any more
4 that we had discussed earlier, it is--my
5 recollection is about \$900,000.

6 Q In that response in Item 2 you stated there would
7 be an over recovery of stranded cost of \$996,000.
8 Is this consistent with Columbia's position that
9 earlier that revenue opportunities should equal
10 stranded cost? I mean why the seeming unbalance
11 here?

12 A First of all, of course the--we are talking about
13 a model, we are talking about estimates. And
14 second, there is nothing in the current program as
15 it sets that indicates that that \$900,000--that
16 \$996,000 would be Columbia Gas of Kentucky's. So,
17 I don't think that is impacting our revenue.

18 Q Is that what you are referring to when you
19 say the last part of that that this will
20 allow choice participants to increase to 37%
21 at the end of the program before Phase 2
22 would need to be invoked?

23 A Yes. Yes, we calculated how much more
24 participation we could get for that \$996,000,

1 if you will. And what it does is it allows
2 us to delay the implementation of mandatory
3 assignment, and, so, you can bump up
4 participation rates that much and say, well,
5 we can still handle--we can handle 1% more,
6 let's say, without having to mandate the
7 assignment of capacity.

8 Q Your response to Item 3, or Question 3, shows
9 how the demand cost will be stranded using
10 the month of, I believe, January of 2002.
11 Can you briefly summarize for the record how
12 remaining demand costs will be reflected and
13 recovered from sales customers through the
14 GCR processes?

15 A I'm not sure I can. Are you asking me a
16 question about how the GCR works, because
17 that is not my area of expertise. It is--if
18 you--I could tell you this, if you took the
19 remaining contracts that we are receiving
20 bills for every month, from pipelines, and it
21 would just be the inverse of this \$393,000 of
22 total stranded cost that shows up on the
23 bottom of the page. There is another portion
24 of demand cost still to be paid, let's say

1 another million dollars, that is the dollars
2 that would be charged to the retail
3 customers. It is what is left after reducing
4 it by 393,000. But as to how it actually
5 rolls through the--our GCA, I'm not familiar
6 with that.

7 Q I'd like to refer you to Item or Question 4, you
8 responded to the Commission's questions concerning
9 the program in other states. If you know, could
10 you tell us what is Columbia Gas of Maryland's
11 sharing percentage in off-system sales and
12 capacity release?

13 A Yes. There is two types of off-system sales
14 and one is referred to as flowing and one is
15 referred to as incremental. For those who
16 were here this hasn't changed since we did
17 this in 1996, so it is the same program.
18 There is a 50% sharing on the incremental
19 sales and there is a 20% sharing to Columbia
20 of Maryland on the flowing sales. As I said
21 before, the remainder is--goes to the gas
22 cost of the retail customers as a credit. In
23 the capacity release program they start
24 sharing immediately but they start sharing at

1 10%, they hit a ratchet at some traditional
2 historic experience level sort of thing, sort
3 of--and then they go to 20% after that for
4 everything above that number. So, it is a
5 two part with a ratchet in it.

6 Q All right, sir. Now, I'd like to refer you
7 again in this same question, Item 4, or
8 Question 4, regarding the Pennsylvania
9 program.

10 A Uh-huh.

11 Q That last--about the middle of the paragraph
12 there it talks about the current program
13 calls for the CPA to keep 100% of off-system
14 sales revenue in return for a predetermined
15 credit per MCF to the retail gas cost. Do
16 you know how that is calculated?

17 A Yes. In the past--I just want to say that
18 Pennsylvania had a more traditional sharing
19 mechanism until this--until just recently
20 this year, or late in 1999. The traditional
21 method was more of a straight sharing, it was
22 about--it had changed, it had different
23 numbers, like 30, 25%, things like that in
24 it. The new one is quite a bit different.

1 The way it works is, as I indicated, we--

2 Q Let me--may I interrupt you just a moment?

3 A Sure.

4 Q Is this, what you are referring to as the new
5 one, is that done by a statutory directive or
6 was it by a regulation?

7 A It was regulation. The way this works is we
8 don't have a percentage of sharing mechanism
9 anymore. What we do have is a credit per MCF
10 of through-put retail sales so the amount per
11 year is not known until you know how much
12 sales we have had to the customers, to our
13 retail sales customers. They each get a
14 credit, it is based--it was negotiated based
15 on historic experience in the off-system
16 sales program, so to some extent CPA is at
17 risk of getting less than they historically
18 have received. They also have an opportunity
19 to get more than they have historically
20 received depending on a couple of the
21 variables, one is the volume of retail sales
22 and the other is the level of off-system
23 sales, the revenue from off-system sales.
24 It's not better or worse, it's just a different

1 approach.

2 Q Well, does--what share, then, does Columbia keep
3 of the capacity release revenue, if any?

4 A Well, everything I have been talking about is off-
5 system sales. In your question we referred to the
6 hundred percent of off-system sales. Capacity
7 release runs on a different track and there hasn't
8 been a lot of modification to that program, it's
9 still a benchmark program with sharing above the
10 benchmark.

11 CHAIRMAN HELTON:

12 The benchmark has never been surpassed?

13 A It was this year. I mean, in the past it hadn't
14 been but our current year we are going to make a
15 little bit on it.

16 Q Now, we are talking about Pennsylvania, what is
17 the benchmark in Pennsylvania, may I ask?

18 A The dollar amount?

19 Q Yes.

20 A It's in the neighborhood of eight hundred and
21 fifty thousand dollars.

22 Q And have you described for me the basis for that,
23 how that benchmark, how it's calculated?

24 A It's not really a calculation, it's usually a

1 negotiation with the consumer advocate.

2 Q Okay. It's calculated that away. What is your
3 percentage of the CP benchmark, what is your--

4 A Once again, there's some bands, ratchets, and I
5 don't recall precisely. I think there's a 25%
6 band and a 50% band, but I'm not sure about that.

7 Q Could you provide us with that information that--

8 A Sure. You'd like the benchmark and the level of
9 the bands?

10 Q Yes, sir, if you can do that, supplement your
11 testimony with that. Again, referring to
12 Pennsylvania, you say within the Choice Program
13 CPA manages a stranded cost rider, I believe,
14 which is billed to the customers on an ongoing
15 basis. How does Columbia of Pennsylvania
16 calculate the stranded cost rider?

17 A In the tariff there is a maximum that they can
18 charge for this rider to help defray stranded cost
19 or to help mitigate the stranded cost. I don't
20 believe it is a calculation.

21 COURT REPORTER:

22 Your Honor, I'm having a problem with
23 the PA system.

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CHAIRMAN HELTON:

Okay, we will take a break to let the reporter get the system working.

(OFF THE RECORD)

Q Mr. Phelps, if I was--

CHAIRMAN HELTON:

Should I ask if there are a lot of technology costs in this program?

MR. TAYLOR:

The investment is out here.

CHAIRMAN HELTON:

Go ahead Mr. Goff.

Q I believe I had asked you the question that how does Columbia of Pennsylvania calculate the stranded cost rider? And I think you replied something that it was in the tariff and there was a cap and I believe that is--we adjourned at that time. Could you--

A I don't know how they calculate the rider. I just know there is a small cents per MCF rider on the--in the program.

Q Let me--it is stated in that that a small portion of Columbia's capacity release revenues is added to the revenue from the

1 rider to help mitigate those stranded costs.
2 Does that portion come from Columbia of
3 Pennsylvania's sharing portion or is it from
4 some other sources?

5 A It's prior to throwing it into the benchmark
6 sharing mechanism. It happens prior to that
7 second calculation, so you reduce the total
8 revenue by that amount and what is left is
9 what is compared with the benchmark and the
10 sharing bands.

11 Q Would it be possible for you to furnish us the
12 mechanism or how that rider is calculated by
13 Pennsylvania?

14 A Yes.

15 Q All right, sir.

16 COMMISSIONER GILLIS:

17 Mr. Goff, do you want that in the
18 narrative or do you want that to be
19 included with the percentages so that
20 you can have the calculation of how it
21 is actually determined?

22 MR. GOFF:

23 Well, if it could be given with the
24 percentages to determine, we would

1 prefer that, Commissioner, yes, sir.

2 CHAIRMAN HELTON:

3 Uh-huh.

4 Q Could you do that Mr. Phelps?

5 A Yes.

6 MR. GOFF:

7 Excuse me, could I have just a moment?

8 CHAIRMAN HELTON:

9 Sure.

10 COMMISSIONER GILLIS:

11 Mr. Phelps, while we have just a minute
12 here let me ask just a couple of
13 questions. Your title with Columbia is
14 Director of Gas Procurement; is that
15 correct?

16 A That's correct.

17 COMMISSIONER GILLIS:

18 Can you explain to me what you do, what
19 gas procurement is?

20 A What it is, yes.

21 COMMISSIONER GILLIS:

22 Well, let me just ask you questions, are
23 you involved in marketing?

24 A No.

1 COMMISSIONER GILLIS:

2 Are you involved in choice programs in
3 other states?

4 A To a degree, yes.

5 COMMISSIONER GILLIS:

6 Customer service, are you involved in
7 customer service?

8 A No. It depends on the definitions of these
9 questions, I'm not sure what customer service
10 is. But--

11 COMMISSIONER GILLIS:

12 I guess my question is and where I'm
13 coming from is just asking broad topics
14 to determine if any of those areas are
15 involved in gas procurement or perhaps
16 in your past you have been involved in
17 any of those? That's a general
18 question?

19 A Okay. I spent several years in the Marketing
20 Department working with large customers and I
21 moved on then to the Transportation Program
22 where I--back in the mid to early 80s when it
23 was new and I basically grew that from one
24 person to a Transportation Program for

1 commercial and industrial customers over
2 about six or seven years before going to gas
3 procurement in the Supply Department. At
4 this time procurement involves the buying of
5 the gas, scheduling of the gas on the
6 pipelines, the reconciliation of pipeline
7 bills and payment, the--and as well as the
8 nominations system for our transportation
9 customers and marketers. We have an
10 electronic bulletin board Internet-type
11 system, like the pipelines, where people,
12 mostly marketers, nominate the supplies to
13 the customers. So, all of--some of those
14 pieces touch on choice. For example, when it
15 comes to capacity assignment, those are my
16 people that are doing that on the transaction
17 basis. And when they are nominating choice
18 volumes, that is coming through our
19 electronic bulletin board, if you like that
20 term. And so, there are different parts of
21 it that we are directly involved in on a day
22 to day basis.

23 COMMISSIONER GILLIS:

24 The purpose of those questions is trying

1 to determine your background and
2 foundation for you answering question on
3 Number 4. What are the proposed
4 incentives for the various participants?
5 And in your answer there I did not
6 gather in your background any reason or
7 any determination that you could
8 determine the incentive for customers
9 and the various participants. So, that
10 was--and consequently the answer in
11 Number 4 there is I think you say
12 possibility, you say right, you say
13 right, you say opportunity, you say
14 opportunity again all throughout there,
15 and the point being that there is no
16 specifics, there is nothing there. I
17 can't tell from your answer if a
18 customer is going to save 10% the first
19 three years and that's been the data
20 that you have gathered from the choice
21 programs in other Columbia states. So,
22 that is really what I'm trying to
23 determine, how your foundation for
24 answering that as to why there is no

1 basis, no real meat on your answer?

2 A Are you referring to Number 4, April 4?

3 COMMISSIONER GILLIS:

4 I don't have a date on it, Page 4,
5 prepared testimony of rehearing of Scott
6 D. Phelps, Page 4, Line 5. I'm sorry if
7 I didn't--the answer to the question is
8 what are the proposed incentives for the
9 various participants?

10 A And we didn't say 10% savings because I don't
11 know what that is going to be.

12 COMMISSIONER GILLIS:

13 No. Do you have that in front of you,
14 or does your counsel--can he provide
15 that answer there for you? That is on
16 Page 4 of your testimony on rehearing
17 but I could not find a date on it. The
18 question is--

19 A I see it.

20 COMMISSIONER GILLIS:

21 Okay. And again, I don't see--you say
22 the possibility of this, the right to
23 choose is an incentive, the right to
24 make the choice, opportunity to gain

1 but, as far as the customer savings X
2 number of percent, X amount for three
3 years, five years, your experience in
4 other states, I did not see that
5 anywhere in your answer.

6 A Right, we do not guarantee. Well, you could
7 provide that maybe from other states. But is
8 that--I can't tell you what the customers are
9 going to save in Kentucky. I will tell you that
10 the customers have saved in other states, but this
11 is not a guaranteed program where you sign a
12 contract and everybody guarantees you are going to
13 save money. It depends on the contract you sign.

14 CHAIRMAN HELTON:

15 Does it also depend upon whether the
16 contract changes at the end of the first
17 year, as has happened in other states,
18 where there were savings in the first
19 year but now that the contracts are
20 being renegotiated the price is
21 changing?

22 A If the price is changing those customers can make
23 other choices, they don't have to stay with the
24 marketer that is raising his price.

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CHAIRMAN HELTON:

But if the majority of the marketers are raising their price, then the customer doesn't have any choice but to choose someone else where the price is higher than the original contract; correct?

A Or including a choice of purchasing from the Columbia utility.

CHAIRMAN HELTON:

In those places where there is not mandatory assignment?

A In all of our states they have the right, when their contract is up, to come back and be served by Columbia Gas. The capacity mandatory assignment issue is not a customer specific issue, it is a marketer agreement. The marketer is taking the capacity, not that individual customer.

COMMISSIONER GILLIS:

I understand the program is not a guarantee but it would appear to me that with the experience that Columbia has in the other states that that would be information that would be readily

1 available to provide for information for
2 us--to assist us in making a decision.
3 It appears to me that--I can't see that
4 there is any incentive anywhere, just in
5 answers I've seen and without any hard
6 data.

7 A I'm not sure if that data had been provided in
8 other interrogatories or not, there has been quite
9 a few. Certainly, the savings in Ohio is
10 multimillion dollars. And that information is
11 available, it is not what I do every day, you
12 know, in terms of calculating the savings.

13 COMMISSIONER GILLIS:

14 And that was part of my question, I
15 wondered why someone else didn't answer
16 if they had that background.

17 MR. TAYLOR:

18 Mr. Gillis, I'm told by Mr. Meyers that
19 that has been answered in other data
20 request and we will try to find that
21 information for you and the data request
22 in which it has been answered.

23 CHAIRMAN HELTON:

24 Mr. Goff.

1 Q Mr. Phelps, let me refer you in the same question
2 or response Number 4 to the Ohio plan issue.
3 Does--in that--in Ohio does Columbia of Ohio share
4 in any part of off-system sales?

5 A In Ohio there is a stranded cost, stranded
6 cost pool, whatever you want to--that's what
7 I call it, the stranded cost pool--it is
8 funded by off-system sales and the other
9 things that I've mentioned here. But the
10 fact that at the end of the program Columbia
11 of Ohio is at risk or gets rewarded, makes it
12 difficult to give you a specific answer on
13 that because there is no specific sharing and
14 I won't not know the sharing until we are
15 done, maybe. But if we do good in off-system
16 sales I consider the dollar we make to be our
17 dollar. And that is because at the end of
18 the program I'm looking to and, hopefully, to
19 exceed this stranded cost mitigation or the
20 stranded cost pool number and I believe that
21 that will happen. If off-system sales is low
22 compared to stranded cost and I lump other
23 funding mechanisms into this--there are
24 several things funding stranded costs. If it

1 is low, then our other revenues are at risk
2 for paying that up to be balanced. So, this
3 is a technical paragraph, it is worded the
4 way the month to month accounting works but,
5 in reality, all of the revenues are sort of
6 at risk to the stranded cost. And then the
7 end of the--in 2004 they are all subject to
8 paying off the stranded cost. Whether it is
9 capacity release or off-system sales or
10 contract expiration, Columbia of Ohio has
11 taken on that risk and will get the reward if
12 it is over-funded.

13 Q I take it your answer is there is no sharing right
14 up front but your possible incentive is that you
15 may share at the end of the program when it is all
16 figured, shall we say?

17 A Right. I'm not an accountant but I believe
18 it--you don't necessarily have to wait until
19 2004. When we look at the off-system sales
20 program in Ohio I find it to be probably the
21 best incentive for Columbia in the different
22 states that we have got, that we have got
23 programs in. And I consider Ohio the highest
24 incentive program that we have got.

1 MR. TAYLOR:

2 Mr. Gillis, that information you
3 requested is available to you in the
4 Commission's Data Request of July 2,
5 '99. I think it is your first set of
6 data request. The question was number
7 nine and the answer sets out the
8 different percentages that you asked
9 for.

10 Q Does Columbia of Ohio share in any part of short-
11 term capacity release?

12 A It is handled the same way as the off-system
13 sales and then it goes towards the pot that
14 we hope to over-fund.

15 Q Let me ask you, does the Columbia of Ohio--
16 may they retain the excess of revenues above
17 the stranded cost? Do they get to retain
18 that?

19 A Yes, that is what I'm--that's my point,
20 really, that is when I say over-fund, I'm
21 talking about exceeding the stranded cost
22 pool and--

23 Q Why would that not be a better plan than what
24 you have proposed here for Kentucky? I think

1 you maybe said that was the best plan for
2 Columbia maybe or Ohio, unless I
3 misunderstood you. But would that be a
4 better plan than what you have proposed here?

5 A It is the highest--it is the highest
6 incremental sharing that we have got, I
7 consider the incremental dollars to be 100%.
8 Whether it is better for an overall choice
9 program in this particular state is, I think,
10 a different question. I think it--you know,
11 I go back to the collaborative and weighing
12 those different things and the balance of
13 different ways to change the program, and
14 that groups of folks felt that this was the
15 best balance. In fact, our original filing
16 was quite a bit like that, if you think back
17 to the original filing. There were a lot of
18 similarities in our Kentucky original filing
19 and the Ohio program.

20 MR. GOFF:

21 Thank you sir. I have no further
22 questions.

23 CHAIRMAN HELTON:

24 Redirect?

1 MR. SEIPLE:

2 Yes, I have a few questions, thank you.

3

4

REDIRECT EXAMINATION

5 BY MR. SEIPLE:

6 Q Mr. Phelps, you were questioned about the
7 participation ratio being used to divide the
8 contracts, and were asked if that same ratio could
9 be used to divide the 65% share of capacity
10 release. Do you recall that line of questioning?

11 A Yes.

12 Q Were that calculation to be used in the financial
13 model, what type of effect would that have on the
14 model?

15 A With the model balanced at a 37%
16 participation, as described in this set of
17 data request, this most recent set of data
18 request from April 4, and just doing some
19 math in my head for a minute, we have got
20 about three million dollars in the model for
21 capacity release. And at the--near the end
22 of the program 30 some percent participation.
23 If you had a third participation from day one
24 then, as I understood the question, only one-

1 third of the revenue would go toward stranded
2 costs. So, the best you could do, let's say,
3 would be a million dollars out of the three
4 million. The reality is it takes a long time
5 to get to a third participation and so, if
6 you, you know, just cut it in half or
7 something, an estimate would be that we would
8 be a million and a half dollars under funded
9 on the financial model. The other thing that
10 concerns me about that is that, as I said
11 before, most--the lion's share of the
12 capacity release revenue in the model is
13 driven off of stranded capacity. The effort
14 to mitigate stranded capacity direct--which
15 is a direct result of the choice
16 participation, I believe the--I think that is
17 where I want to go, that the revenue as a
18 result of choice and the financial model will
19 be under-funded again if we were to go that
20 way.

21 Q With regard to capacity release, Columbia
22 currently has a gas cost incentive program
23 that involves capacity release dollars, what
24 is your understanding of what happens to the

1 benchmark dollars under the current gas cost
2 incentive program under the capacity release
3 portion of that program?

4 A I believe in the old program and in the
5 proposed program I believe that the bench
6 mark dollars go to fund the retail gas cost,
7 go to support the retail gas--credit to the
8 retail gas cost, which is--which means,
9 basically, since we have had a difficult time
10 marketing capacity in Kentucky, that the
11 retail gas customers will get what they have
12 gotten in the past from capacity release.

13 Q You were asked a number of questions about
14 your response to the Second Data Request
15 dated April 4, 2000. Did I understand you to
16 state that the elimination of the expiring
17 contracts reduced stranded costs in
18 Columbia's model?

19 A Would you say that again?

20 Q With regard to the response to Commission
21 Data Request Number 2, did I understand you
22 to say that the elimination of expiring
23 contracts, which is what the Commission's
24 Order required Columbia to do, have the

1 effect of reducing Columbia's stranded cost
2 in its financial model?

3 A Yes, that's where I discussed it going from
4 31 million down to 24 million.

5 Q And that reduction in the standard cost
6 resulted in the model showing an excess of
7 approximately \$996,000; is that correct?

8 A That's correct, which was balanced to zero by
9 making a small change to the amount of
10 participation we could have before
11 implementing Phase II, so the model is now
12 balanced.

13 Q Now, in the event that there would actually be a
14 dollar surplus, what is Columbia proposing with
15 regard to that surplus?

16 A That would be credited back to customers.

17 Q So that, in effect, there is no revenue
18 opportunity for Columbia as a result of the
19 program; is that correct?

20 A That's correct.

21 Q You also stated that of the unbundling
22 programs in the Columbia states Ohio provides
23 the most incentive for customers; is that
24 correct?

1 A Yes.

2 Q And of the four Columbia states which have
3 unbundling programs, which state has the
4 highest level of customer participation?

5 A I think Columbia of Ohio with about 40% is
6 the highest.

7 MR. SEIPLE:

8 That's all, thank you.

9 CHAIRMAN HELTON:

10 Mr. Goff?

11 MR. GOFF:

12 I have no redirect.

13 CHAIRMAN HELTON:

14 Mr. Gillis, anything? Thank you Mr. Phelps. Next
15 witness.

16 MR. SEIPLE:

17 Our next witness is Judy Cooper.

18 (WITNESS DULY SWORN)

19

20 The witness, JUDY M. COOPER, having first been
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SEIPLE:

24 Q Would you please state your name and spell it for

1 the record?

2 A Judy Cooper, C-o-o-p-e-r.

3 Q And by whom are you employed?

4 A Columbia Gas of Kentucky.

5 Q And you prefiled testimony on March 16; is
6 that correct?

7 A That's correct.

8 Q Do you have any revisions to that testimony?

9 A No, I do not.

10 Q If I were to ask you the questions contained
11 in that testimony, would your answers be the
12 same today?

13 A Yes.

14 MR. SEIPLE:

15 I would like to have Ms. Cooper's
16 testimony marked as Columbia Rehearing
17 Exhibit Number 2 and would moved its
18 admission and make Ms. Cooper available
19 for cross-examination.

20 CHAIRMAN HELTON:

21 Thank you, so ordered.

22 (EXHIBIT SO MARKED: Columbia Rehearing Exhibit
23 No. 2)

24

1 CHAIRMAN HELTON:

2 Mr. Goff? I'm sorry, Mr. Dosker, did you have any
3 questions?

4 MR. DOSKER:

5 No questions.
6

7 CROSS EXAMINATION

8 BY MR. GOFF:

9 Q Ms. Cooper, are you going to appear for Mr. Seiple
10 or are you just answering questions of your
11 previous testimony?

12 A I'm answering questions of my previous
13 testimony.

14 Q Ms. Cooper, in an answer to a question from
15 Commissioner Holmes during the hearing as to
16 the consumer complaints, consumer questions,
17 as to where would they go, I think your reply
18 was that the Commission's complaint procedure
19 would be open by virtue of the fact that the
20 marketer is going to be bound by the
21 operating guidelines in our tariff. Do you
22 recall that?

23 A Yes, somewhat, vaguely, but I think that is
24 still true.

1 Q Let me ask you this, in reference to the
2 Commission's complaint proceedings, were you
3 referring to those complaint proceedings that
4 are contained in 807 KAR 5:001 (12) whereby
5 the Commission regulations of formal
6 complaints and informal complaints are set
7 out?

8 A I don't have the regulations or statutes in front
9 of me but I would, yes, be referring to the
10 Commission's informal complaint procedures as they
11 are generally handled where a customer would call
12 in regarding that complaint, make contact with the
13 complaint investigator and that investigator would
14 contact the utility. That procedure, and if there
15 were not able to resolve the complaint, that the
16 formal complaint procedures would also be
17 available through Columbia.

18 Q In other words, do you--is it your belief or
19 Columbia's belief that the--at that point
20 that the Commission would be within its
21 regulatory duty to enforce all of those
22 complaint procedures contained in the
23 regulations?

24 A Through its enforcement of Columbia's tariff.

1 Q Well, now, Columbia's tariff says that in
2 this dispute resolution that each marketer
3 shall cooperate with Columbia and the
4 Commission to answer inquires and resolve
5 disputes. If a marketer fails to negotiate
6 or resolve customer disputes that arise from
7 the customer's contracts, complaints may be
8 brought to the Commission through its normal
9 complaint handling procedures. Are you
10 familiar with that portion of the tariff?

11 A Which--I don't have that--are you looking at
12 the standards of conduct or under which
13 portion are you looking?

14 Q I'm looking at under the dispute resolution,
15 that would be the original sheet 371, PSC
16 Kentucky Number 5.

17 MR. SEIPLE:

18 May I show a copy to the witness?

19 CHAIRMAN HELTON:

20 Certainly.

21 A I just want to be sure we are talking about
22 customer complaints. Okay, what is the
23 question?

24 Q Okay, that was Item 3 of that. Does--is it

1 your opinion that that would subject the
2 marketer to the formal complaint procedures
3 of the Public Service Commission?

4 A I think they would be subject to the complaint
5 procedures through Columbia. That is what this--
6 this is Columbia's tariff, and that is the
7 enforcement vehicle.

8 Q So, you think it would only be through the
9 tariff that Columbia has and what is provided
10 in it; is that correct?

11 A I think the Commission's enforcement avenues
12 are through Columbia and that the marketer
13 must abide by Columbia's tariff. If the
14 marketer is not abiding by Columbia's tariff,
15 if they are not responding to or resolving
16 customer disputes, then the enforcement
17 vehicle is through Columbia and Columbia
18 would be responsible for whatever action the
19 Commission told Columbia to--was the remedy
20 for the problem with the marketer.

21 Q Under these procedures which--I have
22 mentioned as the complaints, informal
23 complaints, the Commission would issue a
24 directive called a show cause to the--well,

1 to a respondent to respond to the complaint
2 and appear at a hearing, would Columbia--is
3 Columbia under the impression that it would
4 be the one to whom the Commission would issue
5 the directive to respond and to appear?

6 A I think Columbia would be an involved party,
7 the aggregation agreement that the marketer
8 will sign with Columbia will require that
9 marketer, if there should be such a case to
10 arise, that the marketer will be responsible
11 for whatever is required by the Commission
12 that it would require Columbia, or order of
13 Columbia, then the marketer as part of the
14 aggregation agreement will agree to abide by
15 those orders from the Commission as they
16 would be directed to Columbia.

17 Q I note in this tariff, Columbia, I think it
18 is maybe Mr.--it was indicated in this tariff
19 that Columbia would, in essence, purchase the
20 accounts receivable of a marketer and do the
21 billing themselves, Columbia would bill for
22 the services or the commodity; is that--

23 A That's correct.

24 Q --basically correct? If there developed a

1 billing dispute, is it Columbia's
2 representation that the Commission would look
3 to Columbia to resolve that billing dispute
4 under the procedures for such complaints?

5 A Yes, Columbia will still be reading the
6 meters and doing the billing. I might say
7 that the experience, I've been told from
8 other Columbia states with complaints by
9 customers, there have been some billing-type
10 complaints where the marketer was doing their
11 own billing. We don't expect any of those
12 because we are doing the billing ourselves.
13 Other types of complaints if a customer
14 simply decided that--or they got their bill
15 and they misunderstood something that had
16 been communicated to them, the resolution in
17 most of those instances has been an agreement
18 with the marketer that the customer simply
19 reverts back to sales service.

20 Q The rehearing prefiled testimony there was a
21 --Mr. Seiple had--was listed as the
22 respondent on some questions. Let me ask you
23 this and ask you if you are able to respond
24 to that. There was information as to other

1 programs and how they handled the--their
2 authority over marketers and the Maryland, it
3 was responded that Columbia Gas of Maryland's
4 Choice Program is being provided on a
5 voluntary pilot basis. Presently that--the
6 Commission, I assume that is Maryland's
7 Commission, only regulates marketers through
8 tariff positions in Columbia Gas of
9 Maryland's tariffs. Are you able to comment
10 on how that program is working and how those
11 marketers are regulated through the tariff
12 provisions? Is it very similar to what you
13 have proposed here or is it different?

14 A I don't know. I could see if I could find an
15 answer for you, if we have a few minutes later on,
16 but I do not know the answer to that question.

17 Q Under your requirements that you have set forth
18 for marketers to participate in this Columbia
19 Choice Program, there are certain things that
20 Columbia will require of the marketers to certify
21 them for participation in that program. Are you
22 familiar with those?

23 A Can you give me a reference? I am generally,
24 if you are going to ask me to name them I

1 can't sit here and name them off the top of
2 my head, but I have a general familiarity.

3 Q Compared to what--what you have proposed
4 here, would that--would that Columbia Gas of
5 Maryland's--those provisions in this tariff
6 be similar to what is being proposed here, if
7 you know?

8 A You are asking me if the provisions of
9 Columbia Gas of Maryland's certification
10 provisions are similar to Kentucky's?

11 Q Yes, what has been proposed in this Columbia
12 Gas Choice Program?

13 A I don't know. I know that our provisions
14 are--we looked at the other states, our
15 provisions most closely align the provision
16 in Ohio. I assume there is pretty much
17 crossover with what would be in Maryland, but
18 I don't know that for sure.

19 Q Could you furnish us with a copy or those
20 provisions that would apply for the Maryland
21 certification process?

22 A The Maryland certification provisions?

23 Q Yes.

24 A I think we should be able to do that.

1 CHAIRMAN HELTON:

2 Mr. Goff, are you referring to the six
3 items that they are going to require for
4 credit worthiness or are you more
5 expansive than that?

6 Q Under the Columbia tariff that has been proposed
7 here, there are six items, I'm not sure if that is
8 what they have in Maryland or not, but if they
9 have those--whatever certification terms and
10 conditions you have, could you furnish that to us?

11 A Yes. I know Maryland is a small program so
12 we didn't rely as heavily on them, we relied
13 more on Ohio because it is a more successful
14 program and we were attempting to model a
15 more successful program. But I will--

16 CHAIRMAN HELTON:

17 Could I ask a clarifying question?

18 MR. GOFF:

19 Yes, ma'am.

20 CHAIRMAN HELTON:

21 If we are going to ask it for Maryland
22 should we ask it for the other
23 jurisdictions and should we ask for
24 anything additional to these six items

1 that is in the tariff filed here?

2 MR. GOFF:

3 That would--I'd be glad to--

4 Q If you can furnish those with those
5 additional other states that you are
6 participating, and if there are other items
7 other than the six that have been proposed
8 here, could you provide us with a complete
9 certification process, shall I say?

10 A Okay. The certification requirements that
11 you are referring to are on--in our tariff
12 original sheet 33, or--

13 Q I believe that is correct.

14 A I see five.

15 CHAIRMAN HELTON:

16 That may be correct, I was not looking
17 at the tariff, I'm looking at--under the
18 code, under the description of the
19 program I'm looking at the six items to
20 determine credit worthiness. So the
21 tariff may be different from those six.

22 MR. SEIPLE:

23 Your Honor, if I may interrupt for just
24 a second, I would note that in the

1 response to the Commission's Order dated
2 July 2, 1999, there was a question about
3 this, question number 35 in which we
4 provided a several page description of
5 the marketer's certification
6 requirements for the other states. We'd
7 be glad to supplement this if this does
8 not answer the Staff's questions but I
9 guess I would respectfully request that
10 perhaps they take a look at this and let
11 us know if this is sufficient and, if
12 not, we would be glad to supplement with
13 whatever is deemed necessary.

14 CHAIRMAN HELTON:

15 We'll be glad to do that, thank you.

16 Q Thank you. Ms. Cooper, the educational
17 material that you would use to inform the
18 customers about this program, have you or has
19 Columbia decided upon any particular language
20 or what it would say concerning resolution of
21 disputes? And would it specifically state
22 that the consumer may have redress of its
23 grievances with the Public Service
24 Commission?

1 A We have not decided any particular language
2 yet for our customer education program. We
3 are waiting to see the Commission's order to
4 see if we actually go forward with the
5 program. Our bills right now have the
6 customer's--the Public Service Commission
7 hotline number on there for customer
8 complaints or inquiries and that number will
9 still be on our bill. The marketer's name
10 and phone number will also be on our bill,
11 assuming we go forward.

12 CHAIRMAN HELTON:

13 Ms. Cooper, while we are waiting, could
14 we go back to the customer complaint
15 process. In much of the testimony
16 Columbia said they would like for this
17 to be as transparent to customers as
18 possible. And in the--what I have heard
19 as to how a customer would get a
20 complaint resolved, it does not seem
21 that it is as transparent as it is now.
22 Do you not think it is confusing if a
23 customer has to--they call the
24 Commission and we say, well, you need to

1 call Columbia and they say Columbia is
2 not the person who supplies my gas or
3 from whom I buy my gas, it is Stand
4 Energy or someone else. And you say,
5 yes, but we can't--they can't resolve it
6 you have to go to Columbia. Is that not
7 going to be confusing for the customer?

8 A I would assume that when a customer called
9 here that the Commission would call Columbia
10 rather than--you could tell the customer to
11 call Columbia, but I would assume that the
12 Commission complaint investigator would call
13 Columbia and it would work through that way
14 with the complaint investigator ultimately
15 calling the customer back.

16 CHAIRMAN HELTON:

17 But if the complaint investigator says,
18 okay, I'll call Columbia, you know, is
19 the customer still not going to be
20 confused because they have called about
21 Stand Energy?

22 A It is going to be an education process, with
23 our complaint people in our own office as
24 well. That is--we have to educate them first

1 because, really, before we educate our
2 customers because once we start the customer
3 education we expect customers will be calling
4 in on our customer service lines and asking
5 us, asking our Columbia representatives about
6 the program. So, those are really the first
7 people we have to educate even before we can
8 start educating customers.

9 CHAIRMAN HELTON:

10 The second question I have regards you
11 do not currently have the alternate
12 dispute resolution process set forth?
13 That is still to be determine; correct?

14 A Yes.

15 CHAIRMAN HELTON:

16 So, in the meantime if this program goes
17 forward--well, do you have a deadline on
18 when that ADR process would be
19 established?

20 A We are waiting until we ultimately have an
21 Order and we are currently thinking about a
22 time line if we go forward the things that we
23 are going to have to incorporate, but we are
24 really waiting until we have a Commission

1 decision to see what the Commission orders
2 regarding this program and whether we go
3 forward or not.

4 CHAIRMAN HELTON:

5 Well, will you commit that the ADR
6 process will be determined before the
7 program begins?

8 A The ADR process for the standards of conduct,
9 that is where that appears.

10 CHAIRMAN HELTON:

11 And for any resolution between marketers
12 and Columbia, that is a contract dispute
13 and I want to be assured that this
14 Commission has a process set forth that
15 does not put us in the problem of
16 resolving complaints between the
17 marketer and Columbia.

18 A Yes, we will commit to have that. What we
19 have in writing so far is through the general
20 counsel for Columbia with the other alternate
21 dispute resolution process that you refer to.
22 And we will work that out so we have that in
23 place so the marketers will know that before
24 they start out as well.

1 CHAIRMAN HELTON:

2 Thank you.

3 COMMISSIONER GILLIS:

4 Just a follow up, Ms. Cooper, I was
5 reading the first line, the purpose of
6 your testimony is to clarify that
7 marketers are not Columbia's agents. In
8 this process does it not appear that the
9 agents are some type of appendage of
10 Columbia whether it is marketer agent or
11 whatever? And the second part of that,
12 does Columbia really want to be in the
13 regulatory business?

14 A Well, they are not our agent. They are going to
15 be, through the aggregation agreement, they are
16 going to be individually responsible, but Columbia
17 is the vehicle between the Commission and the
18 marketer.

19 COMMISSIONER GILLIS:

20 What should we call them?

21 A I wouldn't call Columbia the regulator, maybe
22 the enforcer.

23 COMMISSIONER GILLIS:

24 I'm talking about the marketers, what

1 should we call them? I said appendage,
2 I'm not sure if not agents?

3 A They are a marketer, they are an agent for
4 Columbia's customers that participates in
5 this program, but they are simply a marketer
6 that is a competitive business operating
7 pursuant to the rules of Columbia's program
8 as set forth in the tariffs approved by the
9 Commission.

10 COMMISSIONER GILLIS:

11 And it seems a stretch for a marketer to
12 be responsible to Columbia who is the
13 regulator in that case?

14 A I don't see Columbia as the regulatory, we
15 are simply the intermediary.

16 COMMISSIONER GILLIS:

17 When the Commission has no
18 responsibility for the marketer, per se,
19 how are you the intermediary?

20 A Because you set forth in our tariffs what is
21 required of the marketers participating in
22 our program. I haven't answered your
23 question?

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COMMISSIONER GILLIS:

It still seems that Columbia is the regulator and--whether we call it that or not--and in turn the company is the marketers agency or would have to be responsible to Columbia, as you say. I'm having trouble with the process.

A They have to be responsible to abide by the terms of the program. And keep in mind that it is a limited term program, this is to go through 2004 and, you know, we will see how it works. There may need to be modifications at some point down the line, but the collaborative felt that this was the best approach to start out with in attracting marketers to the program and trying to make it a successful program and that was the ultimate goal, and to do that within the regulations and statutes that are currently in place in Kentucky. Not to say that things may change down the road, they could, and if they do, then we will deal with those at that time.

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COMMISSIONER GILLIS:

And I guess this is sort of a--what we are discussing is sort of problematic in that we have all read and are familiar with the Paradigm Gaslight Company and the travails that they have gone through and no one wants to go through that again. Consequently that--I've read in publications, that made regulators very aware and cautious, shall I say. And in trying to determine the benefits for the customers, with other problems, it seems that getting back to the question I asked Mr. Phelps again, the incentives and how a customer can win, and it seems all balled up in questions, and this being one of them, Columbia being the regulator for the agent's marketers. More of a comment than a question, it really doesn't have a question unless you'd like to respond.

A I'd just like to say that we want our customers to be happy. If they are not happy with the marketer, then we are going to welcome them back

1 as a sales service customer, and we want them to
2 be happy with whatever their decision is.

3 CHAIRMAN HELTON:

4 One of the reasons for this process
5 being set up the way it is is because
6 Columbia felt they would not get
7 marketer participation and marketers
8 said if there was certification process
9 of the Commission that there might be
10 less participation by marketers; is that
11 correct?

12 A Yes.

13 CHAIRMAN HELTON:

14 What if the terms of Columbia's tariff
15 and code of conduct, and so forth, were
16 complied with and there was a very
17 simple certification process, similar to
18 what some other states have for CLECs
19 where they simply go to the web site and
20 fill our certain information and confirm
21 that they have signed an agreement with
22 Columbia, is that going to keep
23 marketers from participating in this
24 program?

1 A I honestly don't know. The collaborative, we
2 talked about this, what the proposal was,
3 what the collaborative envisioned was the
4 most appealing, whether signing on to a web
5 site and saying, yes, as a marketer I have
6 executed an agreement with Columbia and will
7 be--have been or hoping to be certified to
8 participate in the program. I can't really
9 say what a marketer would say about that,
10 that certainly just doesn't seem to me as
11 much of a constraint as some other proposals
12 might be.

13 CHAIRMAN HELTON:

14 Any other questions?

15 VICE CHAIRMAN HOLMES:

16 I just have one. Do you know--I'm
17 looking at a file in particular--if they
18 develop the, I guess, incidence rate of
19 complaints per hundred or thousand
20 customers, what type of complaints--what
21 is the rate of complaints from that
22 Choice Program?

23 A I don't know, but if you will give me some
24 time to check.

1 MR. SEIPLE:

2 We'd be glad to supply that.

3 Q Ms. Cooper, I have just one other question
4 concerning the collaborative. I think the
5 collaborative or it was indicated that the
6 collaborative would determine actual over or under
7 recovery of stranded costs or how that would be
8 handled some time in the future. Has the
9 collaborative made any decision or have they met
10 to discuss this in any form or fashion since that
11 time?

12 A You are talking about the over or under
13 recovery at the end of the program from our
14 original application?

15 Q Yes, that's correct.

16 A The collaborative has not met to discuss that
17 and the--I believe it is referenced in
18 previous data responses that the intent is
19 that would be subject to all customer sales
20 and choice type customers at the end of the
21 program. But the details have not been
22 established.

23 MR. GOFF:

24 I have no further questions of this

1 witness.

2 CHAIRMAN HELTON:

3 Redirect?

4 MR. SEIPLE:

5 Just a couple, thank you.

6

7

REDIRECT EXAMINATION

8 BY MR. SEIPLE:

9 Q Ms. Cooper, is the relationship between Columbia
10 Gas of Kentucky and the marketer a contractual
11 relationship

12 A Yes, a contract is required.

13 Q And that is what we call the aggregation
14 agreement, is that correct?

15 A That's correct.

16 Q And is it your position that it up to
17 Columbia to enforce that contract should a
18 dispute arise between Columbia and a
19 marketer?

20 A Yes.

21 Q Now, with regard to marketers in the Choice
22 Program, Commissioner Gillis asked you about
23 their status. Is the status of the marketers
24 in the Choice Program any different than the

1 status of the marketers who participate in
2 traditional transportation programs?

3 A Marketers that will participate in the Choice
4 Program do have certification requirements
5 which is different but, otherwise, no.

6 Q And do marketers in the traditional
7 transportation program sign an agreement with
8 Columbia in order to participate in that
9 traditional program?

10 A Yes.

11 MR. SEIPLE:

12 Thank you, that's all I have.

13 CHAIRMAN HELTON:

14 Isn't there an additional difference, Ms. Cooper,
15 in that in traditional programs you do not have
16 the company standing behind?

17 A That's true, the company will stand behind
18 for choice customers.

19 CHAIRMAN HELTON:

20 Mr. Goff?

21 MR. GOFF:

22 No questions.

23 CHAIRMAN HELTON:

24 Mr. Gillis, Mr. Holmes? Thank you Ms. Cooper.

1 Did you all have any questions? Do you have a
2 witness?

3 MR. DOSKER:

4 Mr. Borchert.

5 CHAIRMAN HELTON:

6 Would you please state your name again please?

7 A Jerry Borchert, B-o-r-c-h-e-r-t.

8 (WITNESS DULY SWORN)

9
10 The witness, JERRY BORCHERT, having first been
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DOSKER:

14 Q Good morning, Mr. Borchert, would you state your
15 name?

16 A Yes, Jerry Borchert.

17 Q And where are you employed?

18 A Stand Energy Corporation.

19 Q And what is your position with Stand Energy?

20 A I'm the Director of Regulatory Affairs.

21 Q Did you prefile testimony in this case?

22 A I submitted comments in response to Columbia's
23 prefiled testimony.

24 Q The--

1 A Excuse me, I wrote the comments and since I
2 am not an attorney, you signed it.

3 Q Right, very good. The issue that we are here
4 concerned about today, obviously, is the
5 marketers. In preparation for this hearing
6 did you review the marketer materials that we
7 have with Columbia in Ohio?

8 A Yes, I did.

9 Q Deal with, I guess, first, the standards of
10 conduct and the code of conduct, do you have
11 a copy of those--

12 A Yes, I do.

13 Q --in front of you. Is that a true and
14 accurate copy of the rules we live by under
15 the Columbia program in Ohio?

16 A Yes, it is.

17 Q I want to ask you a couple of questions about
18 those.

19 A If I may clarify one thing, the standards of
20 conduct refers to Columbia marketing
21 affiliates and the code of conduct refers to
22 independent marketers.

23 Q That is correct. Under the standards of conduct
24 which govern Columbia and its marketing affiliate

1 and their operations, is it true that the standard
2 requires a non-discriminatory application of
3 tariff provisions even if they allow discretion?

4 A Yes.

5 Q Is it true that Columbia is not allowed to
6 give any preference to any marketer,
7 including its marketing affiliate, even if
8 there is no discretion provided for in that
9 tariff?

10 A That is true.

11 Q Is it a requirement that non-tariff services
12 such as billing and envelope services are
13 priced uniformly?

14 A That's correct.

15 Q Transportation requests have to be processed
16 similarly and not discriminatorily?

17 A That is correct.

18 Q Columbia agrees not to disclose any marketer
19 information or customer information or
20 contract information; is that correct?

21 A Correct.

22 Q If a customer calls Columbia and wants to
23 know about the Choice Program, does Columbia
24 do anything other than provide a list of the

1 approved or certified marketers in Ohio?

2 A No.

3 Q They don't give a preference or an
4 endorsement to any particular company?

5 A No. Well, let's say I presume not. Not
6 working for Columbia, I don't know, but--

7 Q In your experience has that ever occurred?

8 A In my experience, no.

9 Q The code of conduct applies to marketers such
10 as Stand Energy and governs our behavior
11 under the Columbia program; is that correct?

12 A That's correct.

13 Q We are part of it. Does the aggregation
14 agreement incorporate by reference the code
15 of conduct?

16 A Yes, it does, as I recall.

17 Q So, our contract with Columbia requires us to
18 follow the rules that are contained in the
19 code of conduct?

20 A That's correct.

21 Q Does Stand Energy consider participation in
22 any choice program a legal right or a
23 privilege?

24 A It is like driving, it is a privilege.

- 1 Q Are we prepared to comply with reasonable
2 rules that are promulgated in order to
3 participate in any given program?
- 4 A Oh, absolutely.
- 5 Q Are there some marketers that choose not to
6 live by rules of various suppliers in various
7 states and just pack up and move out?
- 8 A Whether they are--choose not to live by the
9 rules, I don't know, but certainly not all
10 marketers participate in every location.
- 11 Q Okay. Some of the, I think, important items
12 in the code of conduct I want to ask you
13 about, are we at Stand and every other
14 marketer in Ohio required to clearly
15 communicate customer rights and
16 responsibilities to them?
- 17 A Absolutely. This is kind of like the new
18 insurance contracts where it has to be in
19 plain language. There is no legalese
20 involved in the customer contract. As a
21 matter of fact, in Ohio the consumers counsel
22 and the Commission review those contracts for
23 the language.
- 24 Q And do they routinely suggest language

1 changes?

2 A Yes.

3 Q The pricing and payment terms that we have
4 with our customers, are those required to be
5 also written and understandable as well?

6 A Yes.

7 Q Is there a prohibition against fraudulent,
8 misleading or deceptive trade practices?

9 A Of course.

10 Q Obviously, it incorporates the terms of the
11 aggregation agreement or refers to the
12 aggregation agreement which incorporates by
13 reference the code of conduct. Are we
14 required in Ohio, and other marketers as
15 well, to undergo a credit evaluation?

16 A Yes.

17 Q Does--strike that. Is there a regulatory out for
18 the customer?

19 A By regulatory out--

20 Q Would you define that please?

21 A Yes, I was just going to say I should define
22 that. There is a regulatory out in the
23 contract and that is a situation whereby the
24 customer is released from any obligation to

1 the marketer if for some reason the
2 Commission should suspend the program or
3 otherwise terminate the arrangement.
4 Q Okay. Do residential customers in Ohio have
5 the right to terminate or renegotiate their
6 contracts with marketers after the first full
7 year or service?
8 A Well, actually, yes. Typically, that is the
9 case. Sixty days prior to the end of the
10 contract we send a notice out to each
11 residential customer, or actually each
12 residential and small commercial that is
13 involved in the small gas transportation
14 program. They have 30 days to respond to us
15 whether they wish to terminate or not. They
16 have the right to go back to Columbia or
17 Cinergy or wherever, they have the right to
18 switch to another marketer at that point.
19 Typically, though, the contract would
20 automatically renew. There is a situation, I
21 know we have experienced it in the Cincinnati
22 Gas & Electric market, where the gas cost
23 recovery has been extremely low for the last
24 couple of months and it has actually cost

1 more to buy from us. Customers who have
2 called us we have just said, if you want out
3 we will let you out.

4 Q Okay.

5 A You have to understand this entire program is
6 a commercial venture. We are dealing with
7 the public, we have to respond to the public,
8 as the old saying, you can walk with your
9 feet and that is essentially what it is. I
10 think the operative word here is choice. So,
11 if a customer is not happy with my service
12 they will find some place else.

13 Q So, Stand Energy has let customers out of
14 binding contracts?

15 A Yes.

16 Q Because it was costing them more to purchase
17 their gas from Stand than from someone else?

18 A Yes, yes, we have, in fact the only place it
19 has happened has been in Cincinnati Gas &
20 Electric. It has only been for a couple of
21 months, I know, I buy gas from Stand Energy
22 myself. And over the course of the contract
23 I have saved money, it is just the last
24 couple of months I haven't. But we are not

1 going to argue with a customer if it is that
2 important to them, let them go.

3 Q Is it your opinion that that is a good
4 business decision on the part of Stand Energy

5 A Oh, absolutely, I'd rather have a happy
6 customer than an unhappy customer.

7 Q Do you think it is more likely in the future
8 that when that customer goes shopping again
9 for gas rates that he might call us and
10 inquire what are our prices?

11 A We have had some call back, sure.

12 Q Talk about complaints. Tell me, tell the
13 Commission about your experiences at Stand
14 with customer complaints in the Choice
15 Program?

16 A From my experience the complaints have been
17 fairly negligible from my perspective. Most
18 of the ones that I have seen are when new
19 customers first switch over, and take it in
20 terms of Columbia Gas, customers in the
21 Columbia Gas of Ohio system have been used to
22 receiving a bill with a bundled rate. With a
23 footnote that says this includes a gas cost
24 recovery of a certain amount. When they join

1 the transportation program the distribution
2 fee and the commodity fee are separated. So,
3 that becomes a change that is sometimes
4 difficult to understand. The calls that we
5 get are, well, this is terrible, Columbia is
6 charging me extra money. And we have a good
7 staff that is very patient, explains to them
8 that, no, they have been paying this all
9 along, it is just that they haven't seen it
10 broken out before. In fact, they are saving
11 quite a bit of money. I think we have been
12 running about 18% to 20% annually in the
13 Columbia Gas of Ohio system.

14 Q In terms of other marketers, certainly not
15 Stand Energy, but what other types of
16 complaints have you seen in Ohio, not
17 necessarily on Columbia but on any of the
18 operating systems?

19 A There were a number of complaints initially
20 about door to door solicitations. There was
21 a problem at one point and I think that has
22 been pretty well squelched.

23 Q Well, what was the problem and how was it
24 dealt with, if you know?

1 A I'm not sure. This was something that was
2 handled behind the scenes, OCC at the--the
3 Consumers Counsel, I believe.

4 Q Is the--okay, is the marketer still active in
5 Ohio?

6 A Yes.

7 Q So, the Commission apparently was satisfied
8 with the resolution of the process?

9 A Yes.

10 Q If you know, does Stand Energy have any objection
11 to being--philosophical objection to being
12 regulated by the Commission?

13 A I think we have a philosophical objection, I
14 believe that by signing the aggregation
15 agreement with Columbia, which incorporates
16 the code of conduct that there is sufficient
17 oversight. I think our position is that we
18 are an independent marketer, we don't want to
19 get into the regulatory game, and I use that
20 term with utmost respect, of course. But I
21 don't really see it as an issue because,
22 again, if we are going to be marketing--I
23 think I mentioned this in previous testimony,
24 that the marketers who take part in these

1 programs are not fly by night operations,
2 they are not here to skin the fatted calf.
3 We are here to provide a service and if the
4 service is not being provided, the customers
5 will answer appropriately.

6 Q One of the questions from the Commission
7 earlier was about Commission participation in
8 the certification process. In your
9 experience, would you say that most marketers
10 don't voluntarily participate in most
11 Commission proceedings that might affect
12 them?

13 A I would say from my experience that that is
14 pretty much the case. There are some of the
15 very large marketers are regular. I think,
16 just from my experience, 13 years with the
17 Public Utilities Commission of Ohio, I think
18 Stand Energy has taken part in more cases
19 than most marketers have.

20 Q Do we currently have a complaint case pending
21 against Cincinnati Gas & Electric in the
22 Public Utilities Commission of Ohio?

23 A Yes, we do.

24 Q Is it your opinion that we have a fairly strong

1 case upon which we based that complaint?

2 A I think so, yes.

3 Q Did you not attempt to get other marketers who
4 were similarly situated and affected to join our
5 action again CG&E?

6 A I suggested to it because there were many similar
7 situated marketers. I can go back to a situation
8 that occurred probably seven or eight years ago,
9 coming out of a Commission hearing in Columbus one
10 of the commissioners said, you know, it is
11 interesting that there is a consumers counsel that
12 takes care of residential customers and there are
13 the big law firms that take care of the big
14 industrial customers, but Stand Energy is the only
15 one that comes to the plate for the guys in the
16 middle. And that is what we have done.

17 Q Were the other marketers in the Cincinnati
18 area that you contacted, were any of them
19 interested in participating in our case?

20 A Only to see how it came out. There is no
21 sweat equity involved.

22 Q Right. Are there legal and other costs associated
23 with Commission dealings?

24 A Yes, of course.

1 Q How many of the other marketers in Ohio are
2 you aware of that have on-staff lawyers?

3 A None that I can think of.

4 MR. DOSKER:

5 I think that's all the questions I have
6 at this time.

7 CHAIRMAN HELTON:

8 Any friendly cross?

9 MR. SEIPLE:

10 I have a little bit of cross.
11

11

12 CROSS EXAMINATION

13 BY MR. SEIPLE:

14 Q Mr. Borchert, you were asked a number of questions
15 about the Ohio program. In Ohio does Stand Energy
16 consider itself to be an agent of Columbia Gas of
17 Ohio?

18 A No.

19 Q Have you reviewed the application and
20 supporting attachments in the Kentucky
21 application?

22 A Yes, I have.

23 Q Under those documents, as you understand
24 them, would you consider Stand Energy to be

1 an agent of Columbia Gas of Kentucky were
2 Stand to sign the aggregation agreement and
3 participate in the program?

4 A No. I looked at--I see it as an--that we are
5 an agent for the customer.

6 MR. SEIPLE:

7 Thank you, that's all I have.

8 CHAIRMAN HELTON:

9 Mr. Goff?

10

11

CROSS EXAMINATION

12 BY MR. GOFF:

13 Q Mr. Borchert you--could you tell us what the
14 nature of that complaint was between Stand and the
15 Cincinnati utility

16 A Well, we have been to hearing so I guess I
17 can discuss that.

18 MR. DOSKER:

19 You're under oath.

20 A Yes. Cincinnati Gas & Electric in their
21 Customer Choice Program issued to each
22 marketer a daily nomination quantity of gas
23 for that particular marketer's pool. During
24 the course of the season CG&E made

1 significant errors in their forecast. We, in
2 fact, forecasted better what our customers
3 needed and repurchased gas based on our
4 projections. At the end of the season we
5 were considerably short and Cincinnati Gas &
6 Electric would not let us deliver the gas
7 that we had repurchased, so we had to sell it
8 at a loss on the open market. And then when
9 it came to the end of the year when they
10 said, well, we were something in the
11 neighborhood of 68,000 dekatherms short of
12 what our pool actually used, they said, well,
13 now pay me back. And this happened the last
14 August and September when gas was at a
15 historically high price. So, we sold at a
16 loss low price gas and had to pay them back
17 high price gas. We basically filed a
18 complaint seeking damages that their
19 inaccuracy caused us to harm. So, that is
20 the nature of the complaint.

21 Q That was part of the--been part of a
22 contract, would that be termed a contract
23 dispute between yourself and the utility?

24 A In a manner of speaking, insofar as the

1 contract specified that CG&E would tell us
2 each day how much to deliver. And it wasn't
3 until after the fact that they said, oh, we
4 made a mistake.

5 Q Was that part of the--was that included in
6 the tariff for the participation of the
7 marketer?

8 A The tariff that was in effect at the time
9 called for quarterly reconciliations. CG&E,
10 prior to the start of the period in question,
11 had filed with the Commission a new tariff
12 that called for annual reconciliations. That
13 tariff was not approved until about four
14 months ago. But they unilaterally decided
15 they were going to go to an annual
16 reconciliation. We said the tariff said
17 quarterly you should have found this mistake
18 earlier. And even as much as two months
19 after the end of the period they still didn't
20 have accurate numbers.

21 Q Well, based upon your prior testimony that
22 you don't think that this Commission would
23 have regulatory control over you, if that
24 were to happen in this tariff, how would

1 that--would you expect that to come before
2 the Commission here?

3 A Could you clarify that please?

4 Q Would that be part of the--is that any part
5 of the tariff that is now proposed before the
6 Commission here in Kentucky?

7 A Not that I'm aware of.

8 Q Okay.

9 A The situation in Cincinnati--

10 Q That was a unique situation to that
11 particular jurisdiction?

12 A I'm not sure that that is accurate. I think
13 Columbia tells us how to send in each day
14 too, but they are more accurate on it. In
15 this particular case we had contracted with
16 CG&E, CG&E is regulated by the Public
17 Utilities Commission of Ohio. Lacking any
18 resolution in our individual negotiations
19 with CG&E and, quite frankly, they admitted
20 that they couldn't pay us back our losses
21 without some kind of ruling. They just can't
22 do that because that would come out of the
23 ratepayers. So, that is what forced us to
24 take it into a complaint case before the

1 Commission. So, our challenge was against a
2 regulated utility.

3 CHAIRMAN HELTON:

4 Are you seeking a ruling from the Ohio
5 PUC before you take Cincinnati to court
6 or are you seeking a ruling from them
7 and there are provisions in the contract
8 for them to pay any penalties?

9 A There are provisions in the contract to pay
10 penalties. I think that our resolution will
11 lie with the Commission. I don't think--our
12 attorney would have to answer that question,
13 I don't think that civil court is a proper
14 venue.

15 MR. DOSKER:

16 And I believe, if I may, I believe the
17 issue was tried to the Commission with
18 the mutual agreement of both parties. I
19 mean, CG&E never objected to the
20 jurisdiction of the Commission to
21 address or remedy the issue. Jerry
22 correctly--Mr. Borchert correctly
23 testified that CG&E's position was,
24 Stand you may be right, but even if we

1 agreed with you we couldn't write you a
2 check. It requires a Commission Order
3 because the monies would end up coming
4 out of rate base. In terms of whether
5 it is contract or something else, I was
6 kind of unclear on that issue as well,
7 and so I framed our case in terms of
8 both breach of contract and in terms of
9 tort law that they had--that CG&E had,
10 whether intentionally or negligently,
11 done something to us that had injured
12 us. And so, I pursued both theories in
13 the hearing and I believe proved all of
14 the necessary elements on both theories.
15 Could we have filed in the Court of
16 Common Pleas, which is the court of
17 general jurisdiction in Ohio, answer
18 probably, yes, but it was a whole lot
19 cheaper to do it in the Commission and
20 CG&E did not object. So, that's how it
21 happened.

22 Q Mr. Borchert, I take it from the testimony, then,
23 that the Ohio Regulatory Commission took
24 jurisdiction of that and--rather than the--thought

1 it had to take jurisdiction. Would that be a fair
2 statement?

3 A Can clarify that, took jurisdiction of what?

4 Q Of this dispute, of this contract dispute
5 between Stand and the utility.

6 A Insofar as, as John has pointed out, CG&E
7 could not just write us a check for the 85 or
8 \$90,000 that was involved without some kind
9 of adjudication. And so, in that context we
10 initiated the complaint against CG&E. The
11 Commission elected to hear it, albeit later
12 than we had hoped, so that is where it
13 stands.

14 CHAIRMAN HELTON:

15 So, what if CG&E had not agreed that the
16 Commission was an appropriate form for
17 it?

18 A Then I think civil court would have been the
19 logical next step.

20 Q In the tariff aggregate agreement Columbia
21 requires the marketer to provide certain
22 information. Toll free or local phone number for
23 account information and ways to resolve disputes
24 with a marketer, a copy of the dispute resolution

1 method with a name and phone number of the
2 contract person--of the marketer and either the
3 company or PSC made contact, the customer--copy of
4 the customer consent form and tape or an e-mail of
5 the--if it is done by tape or e-mail, phone or e-
6 mail, and there is also provision for copy of the
7 uniform information material that a marketer will
8 presumably send to the perspective customer and a
9 copy of a standard contract; is that a fair
10 statement of what you would be required to provide
11 under the aggregation agreement?

12 A There is a lot of stuff in there, but that
13 sound pretty close. The one thing I probably
14 didn't mention before but, also, on the
15 customer's bills, once they have made the
16 transition, there is a little annotation that
17 says--I believe it is on Columbia's, I know
18 it on Cincinnati Gas & Electric--says your
19 supplier is Stand Energy Corporation and a
20 toll free phone number. And in the case of a
21 new customer enrolling in the program we have
22 to maintain records with a signature on file.
23 If the customer calls in or phones in we have
24 to, first of all, have it digitally recorded

1 with time and date stamp, it is part of the
2 process, also is, that we have to ask the
3 customer on the tape did you initiate this
4 call or did we call you. As a marketer we
5 cannot initiate the call to a residential
6 customer. So, there is no slamming involved
7 in this one. The customer has to positively
8 state I initiated this call.

9 Q Yes, sir. The reason I was asking, I kind of
10 went over those as--but you furnish a phone
11 number, who to contact, and you have a form,
12 a standard contract form and your customer
13 consent form?

14 A That's correct.

15 Q And I asked you that in regard to your stated--
16 saying that marketers were reluctant to be subject
17 to the regulatory processes. But if the
18 Commission, as part of its belief that it does
19 have some regulatory control over marketers,
20 required marketers to submit to the Commission
21 those specific items as part of this regulatory
22 oversight, do you think that Stand or other
23 marketers would have any objection or opposition
24 to that? Let me say, those are the--as far as I

1 can tell those are the specific items which you
2 would already be required to submit to Columbia
3 under the terms of the aggregation agreement?

4 A I think from a philosophical standpoint I might
5 have a problem if the Commission attempts to
6 assert direct jurisdiction. I think the mechanism
7 is in place through the tariff and through the
8 aggregation agreement that Columbia is the
9 intermediary and that if the Commission approves
10 the language that Columbia proposes and if I, as a
11 marketer, sign the contract in accordance with the
12 language that has been approved, that that is
13 sufficient oversight. I'm not sure if I answered
14 your question.

15 Q I'll take that as really that you would be
16 opposed to the Commission entering an order
17 to that effect?

18 A I think so. I think that in a free market
19 that we have to establish a dividing line
20 between who is regulated and who is not, and
21 I don't think an independent marketer is
22 regulated. If the Commission asserts that
23 jurisdiction I doubt if there will be much
24 participation; however, if the jurisdiction

1 goes through Columbia and is filtered down
2 through their contract and through their
3 aggregation agreement, I think there will be
4 robust participation.

5 Q In regard to that, is it your--Stand's position
6 that any and all complaint procedures would have
7 to--would go through Columbia and not be directed
8 to the marketer?

9 A Most complaints are addressed to the marketer
10 in the first place. And certainly some
11 customers may have the Columbia number on
12 their refrigerator and call there first but,
13 again, most of the complaints that we have
14 found are very minor in nature. Usually it
15 is misunderstandings. Quite frankly, we get
16 an inordinate number of calls from,
17 obviously, elderly people who just want to
18 talk on the telephone and our staff will sit
19 with them and talk as long as they want.
20 But, normally, they will come to the marketer
21 first.

22 Q If there were no resolution at the marketer
23 level or at Columbia's level, and this
24 Commission wanted to have you directly

1 respond to the complaint, would you do so?
2 A Absolutely. Although I think you are probably
3 taking something to an extreme here. I have never
4 heard of a case that has not been resolved at the
5 local level. I review the docketing section of
6 the Public Utilities Commission of Ohio and also
7 in Kentucky, I have not seen a case where a
8 customer has taken the gas marketer to complaint.
9 Now, there are a lot of telephone cases, but I
10 haven't seen a gas one other than several cases
11 that are pending for inappropriate discontinuation
12 of service, which certainly is not a marketer
13 issue anyhow.

14 MR. GOFF:

15 No further questions of this witness.

16 CHAIRMAN HELTON:

17 Redirect?

18 MR. DOSKER:

19 Just a little bit.
20

21 REDIRECT EXAMINATION

22 BY MR. DOSKER:

23 Q Mr. Borchert, in terms of the CG&E complaint case,
24 the tariff and the aggregation agreement that we

1 have, that Stand has with Cincinnati Gas &
2 Electric, were those approved by the Public
3 Utilities Commission of Ohio?

4 A Yes, they were.

5 Q And since our complaint was based on the
6 application and operation of the methods and
7 processes described in those documents, was that
8 part of the reason we felt like the Commission
9 should be involved in the complaint process as
10 well?

11 A Yes.

12 Q Does the Public Utilities Commission of Ohio have
13 they stated in the past that they have an interest
14 in promoting fair competition among marketers and
15 suppliers in Ohio?

16 A Yes, they have.

17 Q Has it--is it your opinion from what you have
18 seen out of the Public Utilities Commission
19 of Ohio that they take that responsibility of
20 maintaining a level playing field very
21 seriously?

22 A Yes, I would say so. In fact, in their staff
23 evaluation of the three primary programs in
24 Ohio, Columbia, Cincinnati Gas & Electric and

1 East Ohio Gas, they were very candid in their
2 praise and also their criticisms.

3 Q Would CG&E be a utility in Ohio that is more
4 routinely praised or criticized by the
5 Commission, recently?

6 A Recently, I'd say more criticized than
7 praised.

8 Q Thank you. Regarding Commission jurisdiction over
9 marketers, is Stand Energy--and I know this is a
10 legal question and you are not a lawyer but to the
11 extent you are experienced in the industry--is
12 Stand Energy a utility in Kentucky?

13 A Well, in the comments that I wrote I cited
14 the statute. By my definition I would say
15 no, we are not a utility. I think there is
16 some specific language regarding the
17 transportation and facilities, so under those
18 circumstances I would say that we are not a
19 utility.

20 Q If a legislator in Kentucky proposed amending
21 the statute to change the definition of a
22 utility to include marketers--now, I know you
23 can't speak for Stand Energy--but would you
24 personally object to that?

- 1 A I would, yes, and I think that Stand Energy
2 would probably get involved too.
- 3 Q Well, is it true that we bend over backwards
4 to resolve customer complaints?
- 5 A I would say that is correct.
- 6 Q And is it true that we do that to maintain
7 both our relationship with our customers and
8 our relationship with Columbia or the
9 supplier?
- 10 A Yes. I probably left something out a little
11 while ago, I'd rather have a happy ex-
12 customer than an unhappy current customer.
- 13 Q Are--in terms of our relationship with the various
14 suppliers, is our ability to do business behind
15 those systems dependent on our relationship with
16 those suppliers?
- 17 A Suppliers or utilities?
- 18 Q I'm sorry, with the utilities?
- 19 A Let's say that our relationship can ease the
20 way when there are--when problems arise.
21 But, technically, by the tariff they can't
22 reject service from anybody just because they
23 don't like them.
24

1 MR. DOSKER:

2 That's all the questions I have.

3 CHAIRMAN HELTON:

4 Mr. Gillis?

5 COMMISSIONER GILLIS:

6 Mr. Borchert, I'm sorry, what was your title
7 again?

8 A Director of Regulatory Affairs, I push paper.

9 COMMISSIONER GILLIS:

10 I thought I read part of your testimony was that
11 Stand does not want to be in the regulatory game.
12 Do you get anything to do?

13 A Well, in the case of the complaint against CG&E I
14 did most of the work up on that and wrote the
15 complaint. Again, I'm not an attorney so I can't
16 sign it and I can't file it but I do a lot of
17 that. I also sit there and read--wade through the
18 FERC bulletin boards and PUCO bulletin boards and
19 Kentucky Public Service Commission bulletin
20 boards, recognizing that the entities that we deal
21 with are regulated.

22 COMMISSIONER GILLIS:

23 As far as getting customers, you were asked a few
24 questions a while ago as far as how you all get

1 customers. Do you all buy blocks of customers
2 from CG&E or Columbia or do you get referrals from
3 Columbia or CG&E? If a retail customer has to
4 call you, what makes them want to call you?

5 A In some cases the fact that they have a choice.
6 There are--I think I testified at the last hearing
7 that there are some customers that are going to
8 stay with the utility no matter what. There are
9 other customers who are going to leave no matter
10 what. There is some in the middle that just want
11 to shop around, and they make no bones about it,
12 they say I'm going down the list. I saw it on the
13 Commission bulletin board, here is the apples to
14 apples to chart which has all the approved
15 marketers that are operating in that system and
16 they are just calling to see what is there. And
17 sometimes they will call and say I want to sign
18 up. Sometimes they will say I'm going to look
19 into it a little further, and that's their choice.

20 COMMISSIONER GILLIS:

21 Why do they switch?

22 A Usually it is for a better price. Again,
23 there is a certain faction that say, I don't
24 care, I'm not going to take gas from that

1 utility any more and they will just change
2 for that.

3 COMMISSIONER GILLIS:

4 But price is the only thing, you don't give
5 toasters away, do you?

6 A No, no toasters.

7 MR. GOFF:

8 I have one.

9 CHAIRMAN HELTON:

10 I have one.

11 MR. GOFF:

12 Oh, I'm sorry.

13 CHAIRMAN HELTON:

14 Your counsel asked you about the--stand at Ohio
15 Public Utility Commissions on competition. You
16 are not alleging here that the circumstances are
17 the same between Ohio and Kentucky where we don't
18 have a big disparity in price and, therefore,
19 there is not as much of a demand for competition
20 in Kentucky as there was in Ohio, are you?

21 A I really can't speak for Kentucky, I mean,
22 even in Ohio there is a wide range of
23 pricing. If I'm in Columbus I can save a lot
24 of money; if I'm Cincinnati, I'm losing

1 money; if I'm in Cleveland the program isn't
2 even available. But, certainly, different
3 areas of the state, of any state, and
4 different utilities will have different
5 operating procedures. And I think during the
6 collaborative that concluded about two years
7 ago one of my comments at that time was that
8 this can't be a cookie cutter approach.
9 Every utility has their own system. I think
10 one of the very noteworthy ones was Glenn
11 Jennings from Delta who described his
12 particular operating system and the
13 requirements of that system. I said, okay,
14 that is different than what might happen at
15 Louisville Gas & Electric, what might happen
16 at Union Light Heat & power, what might
17 happen at Western Kentucky Gas or Columbia
18 Gas of Kentucky. So, I don't think--I think
19 every utility has to establish a program, if
20 they are going to take part, a program that
21 is suitable to their own system.

22 CHAIRMAN HELTON:

23 But there was customer interest expressed in Ohio?

24 A Once the program was rolled out, sure. In

1 Ohio it started with--in the Toledo area only
2 and then Columbia Gas of Ohio asked the
3 Commission for approval to roll out statewide
4 and that did happen. So, now it is available
5 throughout the Columbia Gas of Ohio system.

6 CHAIRMAN HELTON:

7 But the program started in Toledo because the gas
8 price there was higher than other parts of the
9 state; is that correct? There was a demand
10 because of that?

11 A To some extent, yes.

12 CHAIRMAN HELTON:

13 Mr. Goff?
14

15 RE CROSS EXAMINATION

16 BY MR. GOFF:

17 Q Mr. Borchert, I think you stated that Stand did
18 not consider itself an agent of Columbia,
19 especially in this program.

20 A In any program.

21 Q That you were really--in any program--you are
22 an independent entity of marketer of natural
23 gas?

24 A Yes.

1 Q And you also stated that you didn't think that you
2 came under the statutory provisions to be
3 regulated?

4 A In Ohio we don't.

5 Q Okay. Are you familiar with the Kentucky
6 statutes, specifically the certification
7 statutes 278.020 where it says that no person
8 or corporation shall commence providing
9 utility service to or for the public until
10 it--unless it obtains a certificate?

11 A I'm not familiar with that, I'll read it when
12 I get back to my office. But, again, I don't
13 believe we are providing utility service, we
14 are providing a commodity. The utility
15 service is the distribution site.

16 Q Are you basing that upon your belief or are
17 you basing that upon some statutory directive
18 that you can point us to?

19 A No, that is my belief and it is my
20 interpretation of--and, again, I don't have
21 my comments that I filed in this case, but I
22 did cite the statute. I believe the utility
23 entails facilities, pipes of pertinent
24 facilities.

1 Q What we are talking about, certification of
2 one who commences providing utility service
3 to the public, then it goes on to say--it
4 talks about plan and things of that nature.
5 Do you not think that the--those--that
6 language in there would include a marketer of
7 natural gas?

8 A By my interpretation, no.

9 MR. GOFF:

10 That's all I have.

11 CHAIRMAN HELTON:

12 Anything else? Thank you Mr. Borchert. Any other
13 matters to come before the Commission? I don't
14 have the procedural schedule in front of me, is
15 there any provision for filing briefs?

16 MR. GOFF:

17 I don't believe there was.

18 CHAIRMAN HELTON:

19 There being nothing further, this hearing is
20 adjourned.

21 (OFF THE RECORD)

22

23

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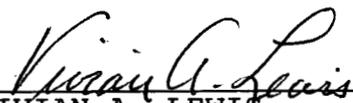
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CERTIFICATE

STATE OF KENTUCKY)
COUNTY OF FRANKLIN)

I, VIVIAN A. LEWIS, a Notary Public in and for the state and county aforesaid, do hereby certify that the foregoing testimony was taken by me at the time and place and for the purpose previously stated in the caption; that the witnesses were duly sworn before giving testimony; that said testimony was first taken down in shorthand by me and later transcribed, under my direction, and that the foregoing is, to the best of my ability, a true, correct and complete record of all testimony in the above styled cause of action.

WITNESS my hand and seal of office at Frankfort, Kentucky, on this the 8th day of May, 2000.


VIVIAN A. LEWIS
Notary Public
Kentucky State-at-Large

My commission expires: 7-23-01

Vivian A. Lewis

COURT REPORTER - PUBLIC STENOGRAPHER
101 COUNTRY LANE
FRANKFORT, KENTUCKY 40601

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BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION

CASE NO. 99-165

FILED

MAY 10 2000

**PUBLIC SERVICE
COMMISSION**

RE: COLUMBIA GAS OF KENTUCKY, INC.

Pursuant to notice duly given, the above styled matter came to be heard April 25, 2000, at 9:00 a.m. in the hearing room of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; The Honorable B. J. Helton presiding.

VIVIAN A. LEWIS
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BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION
CASE NO. 99-165

RE: COLUMBIA GAS OF KENTUCKY, INC.

APPEARANCES:

Hon. B. J. Helton
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PUBLIC SERVICE COMMISSION

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Vice-Chairman
PUBLIC SERVICE COMMISSION

Hon. Gary Gillis
Commissioner
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1 CHAIRMAN HELTON:

2 We are here in the matter of the tariff filing of
3 Columbia Gas of Kentucky to implement a small
4 volume gas transportation service, to continue its
5 gas cost incentive mechanism and to continue its
6 customer assistance program. The rehearing of
7 this case which is Case Number 99-165. Could we
8 have appearances of the parties please?

9 MR. TAYLOR:

10 Madam Chairman and members of the Commission,
11 Richard S. Taylor, 315 High Street, Frankfort,
12 Kentucky 40601, Stephen B. Seiple, P. O. Box 117,
13 Columbus, Ohio 43216-0117.

14 MR. BORCHERT:

15 Madam Chairman, on behalf of Stand Energy Corp.,
16 I'm Jerry Borchert, address is 1077 Celestial
17 Street, Cincinnati, Ohio. Joining me shortly will
18 be our attorney, John Dosker, of the same address.

19 MR. GOFF:

20 James R. Goff for the Commission.

21 MR. BROOKS:

22 Douglas Brooks, appearing for LG&E Energy Corp
23 subsidiary company, my address is Post Office Box
24 32010, Louisville, Kentucky 40232.

1 CHAIRMAN HELTON:

2 The Attorney General is present, do you wish to
3 enter an appearance?

4 MS. CHEUVRONT:

5 No.

6 CHAIRMAN HELTON:

7 Are there any preliminary matters? Call your
8 first witness.

9 MR. SEIPLE:

10 Columbia has two witnesses this morning, the first
11 is Mr. Scott Phelps.

12 (WITNESS DULY SWORN)

13

14 The witness, SCOTT PHELPS, having first been duly
15 sworn, testified as follows:

16

DIRECT EXAMINATION

17 BY MR. SEIPLE:

18 Q Would you please state your name and spell it for
19 the record?

20 A My name is Scott Phelps, the last name is
21 P-h-e-l-p-s.

22 Q And by whom are you employed?

23 A Columbia Gas of Kentucky.

24 Q And you have prefiled testimony in this case on

1 March 16, 2000, is that correct?

2 A That's correct.

3 Q Do you have any revisions to that testimony?

4 A No, I do not.

5 Q If I were to ask you the questions contained
6 in that testimony, would your answers be the
7 same today?

8 A Yes.

9 MR. SEIPLE:

10 I'd like to move--I would like to have
11 that testimony marked as Columbia
12 Rehearing Exhibit Number 1, move its
13 admission and make Mr. Phelps available
14 for cross-examination.

15 CHAIRMAN HELTON:

16 So ordered.

17 (EXHIBIT SO MARKED: Columbia Rehearing Exhibit
18 No. 1)

19 CHAIRMAN HELTON:

20 Mr. Dosker, do you have questions for this witness
21 or would you like for us to come back to you?

22 MR. DOSKER:

23 No questions, Your Honor.
24

1 CHAIRMAN HELTON:

2 Thank you. Mr. Goff.

3

4

CROSS EXAMINATION

5 BY MR. GOFF:

6 Q Mr. Phelps, referring to your prefiled testimony
7 of April 4, in response to the Commission's Data
8 Request of April 4, in Item 2 of that testimony
9 you stated that Columbia would have--and this is
10 at the bottom of the page--Columbia will have to
11 compute the dollars associated with each pipeline
12 contract independently based on whether it is used
13 for the sales customers or is stranded by
14 customers converting to choice. Could you
15 describe the criteria that Columbia would employ
16 in determining whether the capacity in a
17 particular contract is used by sales customers or
18 is stranded by cost customers?

19 A Yes, I will. It is more a function--it is
20 not a function of so much as trying to figure
21 out which pipeline is serving molecules
22 exactly to different customers as much as it
23 is coming up with a process to identify
24 stranded contracts and reduce those from the

1 total. The first step is to recognize that
2 there is capaci--two types of capacity that
3 we are working with: Capacity that comes--
4 that delivers gas to the city gate, Columbia
5 Gas of Kentucky, and capacity that is
6 upstream of those contracts, say, bringing
7 gas from Louisiana to Columbia Transmission
8 somewhere in Kentucky, delivering to those
9 contracts that deliver to our city gate. The
10 contracts that have the possibility of
11 terminating during the program are city gate
12 delivered contracts. And so, what this is
13 trying to discuss is the fact that we will
14 start out with all of our contracts and then
15 when contracts have the potential to be
16 terminated, if choice has experienced enough
17 participation at that time, that contract
18 will be terminated. In our formulas and in
19 the example, I guess it is not this one but
20 in number three that follows, we show that
21 the--in the example of January 2002, for
22 example, there are three contracts that can
23 terminate. Those are reviewed against the
24 choice participation and it is found that all

1 of those could be terminated and would have
2 been and there is still stranded capacity
3 after that. The stranded capacity that is
4 after that is, in that example, Columbia Gas
5 Transmission FT and Columbia Gas Transmission
6 SST combined with the storage, the storage
7 transportation service. We are referring to
8 all of those types of city gate services.
9 So, what we have identified is the capacity
10 that is remaining and stranding the remaining
11 percentage that is needed to cover the total
12 stranded cost--the total stranded capacity, a
13 ratio of the Columbia Gas Transmission FTS,
14 SST and FSS. Again, it is not an
15 identification of--this pipeline is for
16 choice customers and this pipeline is for
17 retail sales customers as it--as much as it
18 is a formula to calculate the cost. The
19 second type of capacity is the upstream
20 capacity. None of those are able to
21 terminate during the term of the program and
22 the approach there, as shown in Example 3,
23 answer to Question 3, is the--simply the
24 ratio of choice participants to the total.

1 In that example it is a little over 24%. So,
2 24% of the upstream capacity would be
3 stranded. There is one other item I guess I
4 should mention, as long as we are talking
5 about the example, which highlights one of
6 the contracts, and that is the local gas.
7 The local gas is not stranded and we believe
8 can't be stranded at this time because there
9 is really no capacity related to that. It is
10 a gas purchase agreement that goes through
11 2004. So, that contract is being reserved
12 for the retail sales customers. And you will
13 see that 7,100 dekatherms is deducted before
14 the TECO FT stranded capacity is determined.

15 Q That global contract is strictly for
16 commodity costs, is that--

17 A The local?

18 Q Yes.

19 A Yes, it is all commodity cost.

20 Q Now, Mr. Phelps, with regards to the
21 potential allocation of the--of at least a
22 portion of the revenues generated from the
23 gas cost incentive mechanisms, has Columbia
24 considered allocating at least some portion

1 of those revenues on the same basis, i.e., a
2 percentage as will be applied in the
3 allocation of stranded cost?

4 A Could you expand on that a little bit?

5 Q Would it be appropriate to apply the same
6 ratio that you have described to these--to
7 the capacity to allocate the revenue?

8 A I'm not sure that there is a similar logic.
9 I mean, the logic of the capacity is you can
10 see what the participants are using and what
11 they have stranded. If anything, off-system
12 sales revenues are in different--they live in
13 different places in terms of what they are
14 related to. If--I can't see the connection,
15 I guess, between a revenue stream and the
16 stranded capacity that is limited or is
17 calculated based on choice participation.
18 And, as far as I know, to answer your
19 question, I haven't been involved in anything
20 considering that.

21 Q Referring you to Item 4 of your response,
22 your response indicates that two states,
23 Maryland and Pennsylvania, the gas cost
24 incentive mechanisms predate the unbundling

1 programs and were not built into the choice
2 programs in those jurisdictions; is that
3 correct?

4 A Yes.

5 Q Why would not a similar treatment be
6 appropriate here in Kentucky?

7 A In both cases Columbia Gas of Maryland and
8 Columbia Gas of Pennsylvania is retaining
9 sharing percentages just as they did prior to
10 choice.

11 Q They are not allocating the revenues to
12 stranded costs?

13 A Well, in Maryland which is, as I say, quite a
14 small program, I believe it is still referred
15 to as a pilot, the--there is a mandatory
16 assignment of capacity, there is low
17 participation as a result and there is no
18 stranded cost as a result. So, there is not
19 another--there is not another pot requiring
20 funding. In Pennsylvania the program was
21 designed around a combination of surcharges
22 and mandatory assignment, or what we have
23 called Phase 2 here in Kentucky. So, in both
24 of those cases the stranded cost had to be

1 dealt with and was. We feel that the
2 collaborative came up with a better approach
3 here in Kentucky than in those two. But you
4 will see in all three stranded cost are
5 covered, it is just in different ways.

6 Q The--refer you to--in the Commission's April
7 4 data request Columbia was asked to describe
8 all capacity release and all system sales
9 activities in which it no longer has the
10 incentive to engage, absence the restoration
11 of the incentive sharing mechanism. I
12 believe you responded that Columbia will no
13 longer have the financial incentive to engage
14 in the incentive sharing mechanisms related
15 to capacity release in off-system sales. Did
16 Columbia engage in capacity to release
17 activities before its incentive sharing
18 mechanisms were approved?

19 A We started participating in capacity release
20 transactions in 1993, which was before the
21 incentive program was approved.

22 Q What was Columbia's incentive to release
23 capacity at that time?

24 A It was not financial. It was an opportunity

1 afforded to us by the FERC and we felt we
2 should implement it.

3 CHAIRMAN HELTON:

4 Excuse me, but if it wasn't financial
5 why would you do that?

6 A It wasn't--there was no financial incentive
7 for Columbia at that time. It was a
8 financial incentive for our customers for us
9 to do it.

10 Q Mr. Seiple in--Mr. Phelps, in the Order
11 entered in this case the Commission stated
12 that the Commission's Order of January 27
13 shall be clarified to state that Columbia
14 will not be prohibited from recovering all
15 prudent program costs that could not be
16 mitigated. Now, in the response to the April
17 4 Order in Number 1, should the Commission
18 interpret the response to mean that in the
19 absence of incentive sharing mechanisms
20 Columbia will not engage in capacity release
21 or make off-system sales in order to off set
22 or mitigate its stranded cost? In other
23 words, the Commission has said that you may
24 recover these prudent program costs, but your

1 response apparently indicates that absent the
2 incentive sharing mechanisms you don't feel
3 that you will engage in this; is that
4 correct?

5 A I don't think I said that in Number 1. I
6 think that there is a difference in any
7 business that has a financial incentive
8 versus one that doesn't, and the results are
9 different.

10 Q Do you--

11 A I'd like to expand on the capacity release
12 question you gave me and note that the vast
13 majority of the release revenue in the model
14 is a direct result of the Choice Program in
15 the stranded cost, or the stranded capacity
16 that we are trying to mitigate. In fact, our
17 calculation using the model is like--I
18 answered this in an earlier question--I think
19 it was about 83% of the revenue in our model
20 is a direct result of the Choice Program.
21 And we felt it was situated in such a way
22 that it made more sense that that should go
23 against the stranded cost.

24 Q It was interpreted that your response is that

1 with these incentives you would make, shall
2 we say, a stronger effort, devote more
3 resources and information to these off-system
4 sales and capacity release to mitigate these
5 stranded costs. But without that will you
6 still put forth that effort, will you still
7 try to push the capacity release, the off
8 sales system--the off-system sales to offset
9 these stranded costs?

10 A No, I don't believe we will both--we will
11 have those two tools to use and I think the
12 difference will come in our--what we can get
13 done in a day in terms of that versus the
14 other important tasks, such as procuring the
15 gas and making sure it gets to the right
16 place. I just think it will be, particularly
17 with off-system sales, it will be a reduced
18 focus. I think priorities will start to
19 shift, I just think that is a natural
20 occurrence. I don't believe that we would
21 stop doing them all together, no.

22 Q In your response to--or Item 2 of that same
23 request you discuss how the denial of the use
24 of expiring contracts as a revenue

1 opportunity causes Columbia to no longer be
2 able to use the method it originally used to
3 calculate the stranded cost. Can you
4 describe how that method--how the method that
5 was originally used in the financial model
6 differs from the method you described in that
7 response that results in stranded cost
8 decreasing from, I think, 31 1/2 million to
9 23.4 million?

10 A Yes, could you repeat which question you are
11 looking at?

12 Q Okay. This relates to Item 2 of the response
13 of April 14.

14 A The original filings locked in a unit cost
15 for demand charges regardless of the upcoming
16 termination of contracts. And when the
17 Commission's Order came out it really changed
18 the whole approach of looking at the cost.
19 Because when everything was still in the
20 equations you weren't--the way I think of it
21 is the stranded costs were still on both
22 sides of the equation, both sides of the
23 equal sign. And when the--when we were
24 ordered not to include terminated cost

1 contracts or not to act like they still
2 existed in the demand cost part of the GCA,
3 we had to--once the terminated contracts were
4 terminated they fell out of both sides of the
5 equation. And I think when--in the
6 Commission's Order on the attachment or the
7 table, they were not--when a contract is
8 terminated the stranded costs disappear,
9 based on the Commission's Order. So--and yet
10 the 31 million or so didn't change in the
11 Commission's table where we should have taken
12 the terminated dollars and reduced it from
13 that 31 to get the 23 or the 24, whichever,
14 the number you are referring to. Did you
15 under--is that clear? I mean, it is fairly
16 complex but I'm trying to point out that we
17 took it out of one side but we didn't take
18 out of the other side and we should have.
19 And so, when we came back with a different--
20 with the interpretation of how to do that,
21 then the terminated contracts cease creating
22 stranded cost. So, it has to be reduced from
23 31. Just to follow up on that, as a result
24 the stranded cost in the model projected are

1 fully covered now. In fact, there is an
2 expected slight over-recovery projected. So,
3 it is not the minus three million any more
4 that we had discussed earlier, it is--my
5 recollection is about \$900,000.

6 Q In that response in Item 2 you stated there would
7 be an over recovery of stranded cost of \$996,000.
8 Is this consistent with Columbia's position that
9 earlier that revenue opportunities should equal
10 stranded cost? I mean why the seeming unbalance
11 here?

12 A First of all, of course the--we are talking about
13 a model, we are talking about estimates. And
14 second, there is nothing in the current program as
15 it sets that indicates that that \$900,000--that
16 \$996,000 would be Columbia Gas of Kentucky's. So,
17 I don't think that is impacting our revenue.

18 Q Is that what you are referring to when you
19 say the last part of that that this will
20 allow choice participants to increase to 37%
21 at the end of the program before Phase 2
22 would need to be invoked?

23 A Yes. Yes, we calculated how much more
24 participation we could get for that \$996,000,

1 if you will. And what it does is it allows
2 us to delay the implementation of mandatory
3 assignment, and, so, you can bump up
4 participation rates that much and say, well,
5 we can still handle--we can handle 1% more,
6 let's say, without having to mandate the
7 assignment of capacity.

8 Q Your response to Item 3, or Question 3, shows
9 how the demand cost will be stranded using
10 the month of, I believe, January of 2002.
11 Can you briefly summarize for the record how
12 remaining demand costs will be reflected and
13 recovered from sales customers through the
14 GCR processes?

15 A I'm not sure I can. Are you asking me a
16 question about how the GCR works, because
17 that is not my area of expertise. It is--if
18 you--I could tell you this, if you took the
19 remaining contracts that we are receiving
20 bills for every month, from pipelines, and it
21 would just be the inverse of this \$393,000 of
22 total stranded cost that shows up on the
23 bottom of the page. There is another portion
24 of demand cost still to be paid, let's say

1 another million dollars, that is the dollars
2 that would be charged to the retail
3 customers. It is what is left after reducing
4 it by 393,000. But as to how it actually
5 rolls through the--our GCA, I'm not familiar
6 with that.

7 Q I'd like to refer you to Item or Question 4, you
8 responded to the Commission's questions concerning
9 the program in other states. If you know, could
10 you tell us what is Columbia Gas of Maryland's
11 sharing percentage in off-system sales and
12 capacity release?

13 A Yes. There is two types of off-system sales
14 and one is referred to as flowing and one is
15 referred to as incremental. For those who
16 were here this hasn't changed since we did
17 this in 1996, so it is the same program.
18 There is a 50% sharing on the incremental
19 sales and there is a 20% sharing to Columbia
20 of Maryland on the flowing sales. As I said
21 before, the remainder is--goes to the gas
22 cost of the retail customers as a credit. In
23 the capacity release program they start
24 sharing immediately but they start sharing at

1 10%, they hit a ratchet at some traditional
2 historic experience level sort of thing, sort
3 of--and then they go to 20% after that for
4 everything above that number. So, it is a
5 two part with a ratchet in it.

6 Q All right, sir. Now, I'd like to refer you
7 again in this same question, Item 4, or
8 Question 4, regarding the Pennsylvania
9 program.

10 A Uh-huh.

11 Q That last--about the middle of the paragraph
12 there it talks about the current program
13 calls for the CPA to keep 100% of off-system
14 sales revenue in return for a predetermined
15 credit per MCF to the retail gas cost. Do
16 you know how that is calculated?

17 A Yes. In the past--I just want to say that
18 Pennsylvania had a more traditional sharing
19 mechanism until this--until just recently
20 this year, or late in 1999. The traditional
21 method was more of a straight sharing, it was
22 about--it had changed, it had different
23 numbers, like 30, 25%, things like that in
24 it. The new one is quite a bit different.

1 The way it works is, as I indicated, we--

2 Q Let me--may I interrupt you just a moment?

3 A Sure.

4 Q Is this, what you are referring to as the new
5 one, is that done by a statutory directive or
6 was it by a regulation?

7 A It was regulation. The way this works is we
8 don't have a percentage of sharing mechanism
9 anymore. What we do have is a credit per MCF
10 of through-put retail sales so the amount per
11 year is not known until you know how much
12 sales we have had to the customers, to our
13 retail sales customers. They each get a
14 credit, it is based--it was negotiated based
15 on historic experience in the off-system
16 sales program, so to some extent CPA is at
17 risk of getting less than they historically
18 have received. They also have an opportunity
19 to get more than they have historically
20 received depending on a couple of the
21 variables, one is the volume of retail sales
22 and the other is the level of off-system
23 sales, the revenue from off-system sales.
24 It's not better or worse, it's just a different

1 approach.

2 Q Well, does--what share, then, does Columbia keep
3 of the capacity release revenue, if any?

4 A Well, everything I have been talking about is off-
5 system sales. In your question we referred to the
6 hundred percent of off-system sales. Capacity
7 release runs on a different track and there hasn't
8 been a lot of modification to that program, it's
9 still a benchmark program with sharing above the
10 benchmark.

11 CHAIRMAN HELTON:

12 The benchmark has never been surpassed?

13 A It was this year. I mean, in the past it hadn't
14 been but our current year we are going to make a
15 little bit on it.

16 Q Now, we are talking about Pennsylvania, what is
17 the benchmark in Pennsylvania, may I ask?

18 A The dollar amount?

19 Q Yes.

20 A It's in the neighborhood of eight hundred and
21 fifty thousand dollars.

22 Q And have you described for me the basis for that,
23 how that benchmark, how it's calculated?

24 A It's not really a calculation, it's usually a

1 negotiation with the consumer advocate.

2 Q Okay. It's calculated that away. What is your
3 percentage of the CP benchmark, what is your--

4 A Once again, there's some bands, ratchets, and I
5 don't recall precisely. I think there's a 25%
6 band and a 50% band, but I'm not sure about that.

7 Q Could you provide us with that information that--

8 A Sure. You'd like the benchmark and the level of
9 the bands?

10 Q Yes, sir, if you can do that, supplement your
11 testimony with that. Again, referring to
12 Pennsylvania, you say within the Choice Program
13 CPA manages a stranded cost rider, I believe,
14 which is billed to the customers on an ongoing
15 basis. How does Columbia of Pennsylvania
16 calculate the stranded cost rider?

17 A In the tariff there is a maximum that they can
18 charge for this rider to help defray stranded cost
19 or to help mitigate the stranded cost. I don't
20 believe it is a calculation.

21 COURT REPORTER:

22 Your Honor, I'm having a problem with
23 the PA system.

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CHAIRMAN HELTON:

Okay, we will take a break to let the reporter get the system working.

(OFF THE RECORD)

Q Mr. Phelps, if I was--

CHAIRMAN HELTON:

Should I ask if there are a lot of technology costs in this program?

MR. TAYLOR:

The investment is out here.

CHAIRMAN HELTON:

Go ahead Mr. Goff.

Q I believe I had asked you the question that how does Columbia of Pennsylvania calculate the stranded cost rider? And I think you replied something that it was in the tariff and there was a cap and I believe that is--we adjourned at that time. Could you--

A I don't know how they calculate the rider. I just know there is a small cents per MCF rider on the--in the program.

Q Let me--it is stated in that that a small portion of Columbia's capacity release revenues is added to the revenue from the

1 rider to help mitigate those stranded costs.
2 Does that portion come from Columbia of
3 Pennsylvania's sharing portion or is it from
4 some other sources?

5 A It's prior to throwing it into the benchmark
6 sharing mechanism. It happens prior to that
7 second calculation, so you reduce the total
8 revenue by that amount and what is left is
9 what is compared with the benchmark and the
10 sharing bands.

11 Q Would it be possible for you to furnish us the
12 mechanism or how that rider is calculated by
13 Pennsylvania?

14 A Yes.

15 Q All right, sir.

16 COMMISSIONER GILLIS:

17 Mr. Goff, do you want that in the
18 narrative or do you want that to be
19 included with the percentages so that
20 you can have the calculation of how it
21 is actually determined?

22 MR. GOFF:

23 Well, if it could be given with the
24 percentages to determine, we would

1 prefer that, Commissioner, yes, sir.

2 CHAIRMAN HELTON:

3 Uh-huh.

4 Q Could you do that Mr. Phelps?

5 A Yes.

6 MR. GOFF:

7 Excuse me, could I have just a moment?

8 CHAIRMAN HELTON:

9 Sure.

10 COMMISSIONER GILLIS:

11 Mr. Phelps, while we have just a minute
12 here let me ask just a couple of
13 questions. Your title with Columbia is
14 Director of Gas Procurement; is that
15 correct?

16 A That's correct.

17 COMMISSIONER GILLIS:

18 Can you explain to me what you do, what
19 gas procurement is?

20 A What it is, yes.

21 COMMISSIONER GILLIS:

22 Well, let me just ask you questions, are
23 you involved in marketing?

24 A No.

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COMMISSIONER GILLIS:

Are you involved in choice programs in other states?

A To a degree, yes.

COMMISSIONER GILLIS:

Customer service, are you involved in customer service?

A No. It depends on the definitions of these questions, I'm not sure what customer service is. But--

COMMISSIONER GILLIS:

I guess my question is and where I'm coming from is just asking broad topics to determine if any of those areas are involved in gas procurement or perhaps in your past you have been involved in any of those? That's a general question?

A Okay. I spent several years in the Marketing Department working with large customers and I moved on then to the Transportation Program where I--back in the mid to early 80s when it was new and I basically grew that from one person to a Transportation Program for

1 commercial and industrial customers over
2 about six or seven years before going to gas
3 procurement in the Supply Department. At
4 this time procurement involves the buying of
5 the gas, scheduling of the gas on the
6 pipelines, the reconciliation of pipeline
7 bills and payment, the--and as well as the
8 nominations system for our transportation
9 customers and marketers. We have an
10 electronic bulletin board Internet-type
11 system, like the pipelines, where people,
12 mostly marketers, nominate the supplies to
13 the customers. So, all of--some of those
14 pieces touch on choice. For example, when it
15 comes to capacity assignment, those are my
16 people that are doing that on the transaction
17 basis. And when they are nominating choice
18 volumes, that is coming through our
19 electronic bulletin board, if you like that
20 term. And so, there are different parts of
21 it that we are directly involved in on a day
22 to day basis.

23 COMMISSIONER GILLIS:

24 The purpose of those questions is trying

1 to determine your background and
2 foundation for you answering question on
3 Number 4. What are the proposed
4 incentives for the various participants?
5 And in your answer there I did not
6 gather in your background any reason or
7 any determination that you could
8 determine the incentive for customers
9 and the various participants. So, that
10 was--and consequently the answer in
11 Number 4 there is I think you say
12 possibility, you say right, you say
13 right, you say opportunity, you say
14 opportunity again all throughout there,
15 and the point being that there is no
16 specifics, there is nothing there. I
17 can't tell from your answer if a
18 customer is going to save 10% the first
19 three years and that's been the data
20 that you have gathered from the choice
21 programs in other Columbia states. So,
22 that is really what I'm trying to
23 determine, how your foundation for
24 answering that as to why there is no

1 basis, no real meat on your answer?

2 A Are you referring to Number 4, April 4?

3 COMMISSIONER GILLIS:

4 I don't have a date on it, Page 4,
5 prepared testimony of rehearing of Scott
6 D. Phelps, Page 4, Line 5. I'm sorry if
7 I didn't--the answer to the question is
8 what are the proposed incentives for the
9 various participants?

10 A And we didn't say 10% savings because I don't
11 know what that is going to be.

12 COMMISSIONER GILLIS:

13 No. Do you have that in front of you,
14 or does your counsel--can he provide
15 that answer there for you? That is on
16 Page 4 of your testimony on rehearing
17 but I could not find a date on it. The
18 question is--

19 A I see it.

20 COMMISSIONER GILLIS:

21 Okay. And again, I don't see--you say
22 the possibility of this, the right to
23 choose is an incentive, the right to
24 make the choice, opportunity to gain

1 but, as far as the customer savings X
2 number of percent, X amount for three
3 years, five years, your experience in
4 other states, I did not see that
5 anywhere in your answer.

6 A Right, we do not guarantee. Well, you could
7 provide that maybe from other states. But is
8 that--I can't tell you what the customers are
9 going to save in Kentucky. I will tell you that
10 the customers have saved in other states, but this
11 is not a guaranteed program where you sign a
12 contract and everybody guarantees you are going to
13 save money. It depends on the contract you sign.

14 CHAIRMAN HELTON:

15 Does it also depend upon whether the
16 contract changes at the end of the first
17 year, as has happened in other states,
18 where there were savings in the first
19 year but now that the contracts are
20 being renegotiated the price is
21 changing?

22 A If the price is changing those customers can make
23 other choices, they don't have to stay with the
24 marketer that is raising his price.

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CHAIRMAN HELTON:

But if the majority of the marketers are raising their price, then the customer doesn't have any choice but to choose someone else where the price is higher than the original contract; correct?

A Or including a choice of purchasing from the Columbia utility.

CHAIRMAN HELTON:

In those places where there is not mandatory assignment?

A In all of our states they have the right, when their contract is up, to come back and be served by Columbia Gas. The capacity mandatory assignment issue is not a customer specific issue, it is a marketer agreement. The marketer is taking the capacity, not that individual customer.

COMMISSIONER GILLIS:

I understand the program is not a guarantee but it would appear to me that with the experience that Columbia has in the other states that that would be information that would be readily

1 available to provide for information for
2 us--to assist us in making a decision.
3 It appears to me that--I can't see that
4 there is any incentive anywhere, just in
5 answers I've seen and without any hard
6 data.

7 A I'm not sure if that data had been provided in
8 other interrogatories or not, there has been quite
9 a few. Certainly, the savings in Ohio is
10 multimillion dollars. And that information is
11 available, it is not what I do every day, you
12 know, in terms of calculating the savings.

13 COMMISSIONER GILLIS:

14 And that was part of my question, I
15 wondered why someone else didn't answer
16 if they had that background.

17 MR. TAYLOR:

18 Mr. Gillis, I'm told by Mr. Meyers that
19 that has been answered in other data
20 request and we will try to find that
21 information for you and the data request
22 in which it has been answered.

23 CHAIRMAN HELTON:

24 Mr. Goff.

1 Q Mr. Phelps, let me refer you in the same question
2 or response Number 4 to the Ohio plan issue.
3 Does--in that--in Ohio does Columbia of Ohio share
4 in any part of off-system sales?
5 A In Ohio there is a stranded cost, stranded
6 cost pool, whatever you want to--that's what
7 I call it, the stranded cost pool--it is
8 funded by off-system sales and the other
9 things that I've mentioned here. But the
10 fact that at the end of the program Columbia
11 of Ohio is at risk or gets rewarded, makes it
12 difficult to give you a specific answer on
13 that because there is no specific sharing and
14 I won't not know the sharing until we are
15 done, maybe. But if we do good in off-system
16 sales I consider the dollar we make to be our
17 dollar. And that is because at the end of
18 the program I'm looking to and, hopefully, to
19 exceed this stranded cost mitigation or the
20 stranded cost pool number and I believe that
21 that will happen. If off-system sales is low
22 compared to stranded cost and I lump other
23 funding mechanisms into this--there are
24 several things funding stranded costs. If it

1 is low, then our other revenues are at risk
2 for paying that up to be balanced. So, this
3 is a technical paragraph, it is worded the
4 way the month to month accounting works but,
5 in reality, all of the revenues are sort of
6 at risk to the stranded cost. And then the
7 end of the--in 2004 they are all subject to
8 paying off the stranded cost. Whether it is
9 capacity release or off-system sales or
10 contract expiration, Columbia of Ohio has
11 taken on that risk and will get the reward if
12 it is over-funded.

13 Q I take it your answer is there is no sharing right
14 up front but your possible incentive is that you
15 may share at the end of the program when it is all
16 figured, shall we say?

17 A Right. I'm not an accountant but I believe
18 it--you don't necessarily have to wait until
19 2004. When we look at the off-system sales
20 program in Ohio I find it to be probably the
21 best incentive for Columbia in the different
22 states that we have got, that we have got
23 programs in. And I consider Ohio the highest
24 incentive program that we have got.

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MR. TAYLOR:

Mr. Gillis, that information you requested is available to you in the Commission's Data Request of July 2, '99. I think it is your first set of data request. The question was number nine and the answer sets out the different percentages that you asked for.

Q Does Columbia of Ohio share in any part of short-term capacity release?

A It is handled the same way as the off-system sales and then it goes towards the pot that we hope to over-fund.

Q Let me ask you, does the Columbia of Ohio-- may they retain the excess of revenues above the stranded cost? Do they get to retain that?

A Yes, that is what I'm--that's my point, really, that is when I say over-fund, I'm talking about exceeding the stranded cost pool and--

Q Why would that not be a better plan than what you have proposed here for Kentucky? I think

1 you maybe said that was the best plan for
2 Columbia maybe or Ohio, unless I
3 misunderstood you. But would that be a
4 better plan than what you have proposed here?

5 A It is the highest--it is the highest
6 incremental sharing that we have got, I
7 consider the incremental dollars to be 100%.
8 Whether it is better for an overall choice
9 program in this particular state is, I think,
10 a different question. I think it--you know,
11 I go back to the collaborative and weighing
12 those different things and the balance of
13 different ways to change the program, and
14 that groups of folks felt that this was the
15 best balance. In fact, our original filing
16 was quite a bit like that, if you think back
17 to the original filing. There were a lot of
18 similarities in our Kentucky original filing
19 and the Ohio program.

20 MR. GOFF:

21 Thank you sir. I have no further
22 questions.

23 CHAIRMAN HELTON:

24 Redirect?

1 MR. SEIPLE:

2 Yes, I have a few questions, thank you.

3

4 REDIRECT EXAMINATION

5 BY MR. SEIPLE:

6 Q Mr. Phelps, you were questioned about the
7 participation ratio being used to divide the
8 contracts, and were asked if that same ratio could
9 be used to divide the 65% share of capacity
10 release. Do you recall that line of questioning?

11 A Yes.

12 Q Were that calculation to be used in the financial
13 model, what type of effect would that have on the
14 model?

15 A With the model balanced at a 37%
16 participation, as described in this set of
17 data request, this most recent set of data
18 request from April 4, and just doing some
19 math in my head for a minute, we have got
20 about three million dollars in the model for
21 capacity release. And at the--near the end
22 of the program 30 some percent participation.
23 If you had a third participation from day one
24 then, as I understood the question, only one-

1 third of the revenue would go toward stranded
2 costs. So, the best you could do, let's say,
3 would be a million dollars out of the three
4 million. The reality is it takes a long time
5 to get to a third participation and so, if
6 you, you know, just cut it in half or
7 something, an estimate would be that we would
8 be a million and a half dollars under funded
9 on the financial model. The other thing that
10 concerns me about that is that, as I said
11 before, most--the lion's share of the
12 capacity release revenue in the model is
13 driven off of stranded capacity. The effort
14 to mitigate stranded capacity direct--which
15 is a direct result of the choice
16 participation, I believe the--I think that is
17 where I want to go, that the revenue as a
18 result of choice and the financial model will
19 be under-funded again if we were to go that
20 way.

21 Q With regard to capacity release, Columbia
22 currently has a gas cost incentive program
23 that involves capacity release dollars, what
24 is your understanding of what happens to the

1 benchmark dollars under the current gas cost
2 incentive program under the capacity release
3 portion of that program?

4 A I believe in the old program and in the
5 proposed program I believe that the bench
6 mark dollars go to fund the retail gas cost,
7 go to support the retail gas--credit to the
8 retail gas cost, which is--which means,
9 basically, since we have had a difficult time
10 marketing capacity in Kentucky, that the
11 retail gas customers will get what they have
12 gotten in the past from capacity release.

13 Q You were asked a number of questions about
14 your response to the Second Data Request
15 dated April 4, 2000. Did I understand you to
16 state that the elimination of the expiring
17 contracts reduced stranded costs in
18 Columbia's model?

19 A Would you say that again?

20 Q With regard to the response to Commission
21 Data Request Number 2, did I understand you
22 to say that the elimination of expiring
23 contracts, which is what the Commission's
24 Order required Columbia to do, have the

1 effect of reducing Columbia's stranded cost
2 in its financial model?

3 A Yes, that's where I discussed it going from
4 31 million down to 24 million.

5 Q And that reduction in the standard cost
6 resulted in the model showing an excess of
7 approximately \$996,000; is that correct?

8 A That's correct, which was balanced to zero by
9 making a small change to the amount of
10 participation we could have before
11 implementing Phase II, so the model is now
12 balanced.

13 Q Now, in the event that there would actually be a
14 dollar surplus, what is Columbia proposing with
15 regard to that surplus?

16 A That would be credited back to customers.

17 Q So that, in effect, there is no revenue
18 opportunity for Columbia as a result of the
19 program; is that correct?

20 A That's correct.

21 Q You also stated that of the unbundling
22 programs in the Columbia states Ohio provides
23 the most incentive for customers; is that
24 correct?

1 A Yes.

2 Q And of the four Columbia states which have
3 unbundling programs, which state has the
4 highest level of customer participation?

5 A I think Columbia of Ohio with about 40% is
6 the highest.

7 MR. SEIPLE:

8 That's all, thank you.

9 CHAIRMAN HELTON:

10 Mr. Goff?

11 MR. GOFF:

12 I have no redirect.

13 CHAIRMAN HELTON:

14 Mr. Gillis, anything? Thank you Mr. Phelps. Next
15 witness.

16 MR. SEIPLE:

17 Our next witness is Judy Cooper.

18 (WITNESS DULY SWORN)

19

20 The witness, JUDY M. COOPER, having first been
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SEIPLE:

24 Q Would you please state your name and spell it for

1 the record?

2 A Judy Cooper, C-o-o-p-e-r.

3 Q And by whom are you employed?

4 A Columbia Gas of Kentucky.

5 Q And you prefiled testimony on March 16; is
6 that correct?

7 A That's correct.

8 Q Do you have any revisions to that testimony?

9 A No, I do not.

10 Q If I were to ask you the questions contained
11 in that testimony, would your answers be the
12 same today?

13 A Yes.

14 MR. SEIPLE:

15 I would like to have Ms. Cooper's
16 testimony marked as Columbia Rehearing
17 Exhibit Number 2 and would moved its
18 admission and make Ms. Cooper available
19 for cross-examination.

20 CHAIRMAN HELTON:

21 Thank you, so ordered.

22 (EXHIBIT SO MARKED: Columbia Rehearing Exhibit
23 No. 2)

24

1 CHAIRMAN HELTON:

2 Mr. Goff? I'm sorry, Mr. Dosker, did you have any
3 questions?

4 MR. DOSKER:

5 No questions.
6

7 CROSS EXAMINATION

8 BY MR. GOFF:

9 Q Ms. Cooper, are you going to appear for Mr. Seiple
10 or are you just answering questions of your
11 previous testimony?

12 A I'm answering questions of my previous
13 testimony.

14 Q Ms. Cooper, in an answer to a question from
15 Commissioner Holmes during the hearing as to
16 the consumer complaints, consumer questions,
17 as to where would they go, I think your reply
18 was that the Commission's complaint procedure
19 would be open by virtue of the fact that the
20 marketer is going to be bound by the
21 operating guidelines in our tariff. Do you
22 recall that?

23 A Yes, somewhat, vaguely, but I think that is
24 still true.

1 Q Let me ask you this, in reference to the
2 Commission's complaint proceedings, were you
3 referring to those complaint proceedings that
4 are contained in 807 KAR 5:001 (12) whereby
5 the Commission regulations of formal
6 complaints and informal complaints are set
7 out?

8 A I don't have the regulations or statutes in front
9 of me but I would, yes, be referring to the
10 Commission's informal complaint procedures as they
11 are generally handled where a customer would call
12 in regarding that complaint, make contact with the
13 complaint investigator and that investigator would
14 contact the utility. That procedure, and if there
15 were not able to resolve the complaint, that the
16 formal complaint procedures would also be
17 available through Columbia.

18 Q In other words, do you--is it your belief or
19 Columbia's belief that the--at that point
20 that the Commission would be within its
21 regulatory duty to enforce all of those
22 complaint procedures contained in the
23 regulations?

24 A Through its enforcement of Columbia's tariff.

1 Q Well, now, Columbia's tariff says that in
2 this dispute resolution that each marketer
3 shall cooperate with Columbia and the
4 Commission to answer inquires and resolve
5 disputes. If a marketer fails to negotiate
6 or resolve customer disputes that arise from
7 the customer's contracts, complaints may be
8 brought to the Commission through its normal
9 complaint handling procedures. Are you
10 familiar with that portion of the tariff?

11 A Which--I don't have that--are you looking at
12 the standards of conduct or under which
13 portion are you looking?

14 Q I'm looking at under the dispute resolution,
15 that would be the original sheet 371, PSC
16 Kentucky Number 5.

17 MR. SEIPLE:

18 May I show a copy to the witness?

19 CHAIRMAN HELTON:

20 Certainly.

21 A I just want to be sure we are talking about
22 customer complaints. Okay, what is the
23 question?

24 Q Okay, that was Item 3 of that. Does--is it

1 your opinion that that would subject the
2 marketer to the formal complaint procedures
3 of the Public Service Commission?

4 A I think they would be subject to the complaint
5 procedures through Columbia. That is what this--
6 this is Columbia's tariff, and that is the
7 enforcement vehicle.

8 Q So, you think it would only be through the
9 tariff that Columbia has and what is provided
10 in it; is that correct?

11 A I think the Commission's enforcement avenues
12 are through Columbia and that the marketer
13 must abide by Columbia's tariff. If the
14 marketer is not abiding by Columbia's tariff,
15 if they are not responding to or resolving
16 customer disputes, then the enforcement
17 vehicle is through Columbia and Columbia
18 would be responsible for whatever action the
19 Commission told Columbia to--was the remedy
20 for the problem with the marketer.

21 Q Under these procedures which--I have
22 mentioned as the complaints, informal
23 complaints, the Commission would issue a
24 directive called a show cause to the--well,

1 to a respondent to respond to the complaint
2 and appear at a hearing, would Columbia--is
3 Columbia under the impression that it would
4 be the one to whom the Commission would issue
5 the directive to respond and to appear?

6 A I think Columbia would be an involved party,
7 the aggregation agreement that the marketer
8 will sign with Columbia will require that
9 marketer, if there should be such a case to
10 arise, that the marketer will be responsible
11 for whatever is required by the Commission
12 that it would require Columbia, or order of
13 Columbia, then the marketer as part of the
14 aggregation agreement will agree to abide by
15 those orders from the Commission as they
16 would be directed to Columbia.

17 Q I note in this tariff, Columbia, I think it
18 is maybe Mr.--it was indicated in this tariff
19 that Columbia would, in essence, purchase the
20 accounts receivable of a marketer and do the
21 billing themselves, Columbia would bill for
22 the services or the commodity; is that--

23 A That's correct.

24 Q --basically correct? If there developed a

1 billing dispute, is it Columbia's
2 representation that the Commission would look
3 to Columbia to resolve that billing dispute
4 under the procedures for such complaints?

5 A Yes, Columbia will still be reading the
6 meters and doing the billing. I might say
7 that the experience, I've been told from
8 other Columbia states with complaints by
9 customers, there have been some billing-type
10 complaints where the marketer was doing their
11 own billing. We don't expect any of those
12 because we are doing the billing ourselves.
13 Other types of complaints if a customer
14 simply decided that--or they got their bill
15 and they misunderstood something that had
16 been communicated to them, the resolution in
17 most of those instances has been an agreement
18 with the marketer that the customer simply
19 reverts back to sales service.

20 Q The rehearing prefiled testimony there was a
21 --Mr. Seiple had--was listed as the
22 respondent on some questions. Let me ask you
23 this and ask you if you are able to respond
24 to that. There was information as to other

1 programs and how they handled the--their
2 authority over marketers and the Maryland, it
3 was responded that Columbia Gas of Maryland's
4 Choice Program is being provided on a
5 voluntary pilot basis. Presently that--the
6 Commission, I assume that is Maryland's
7 Commission, only regulates marketers through
8 tariff positions in Columbia Gas of
9 Maryland's tariffs. Are you able to comment
10 on how that program is working and how those
11 marketers are regulated through the tariff
12 provisions? Is it very similar to what you
13 have proposed here or is it different?

14 A I don't know. I could see if I could find an
15 answer for you, if we have a few minutes later on,
16 but I do not know the answer to that question.

17 Q Under your requirements that you have set forth
18 for marketers to participate in this Columbia
19 Choice Program, there are certain things that
20 Columbia will require of the marketers to certify
21 them for participation in that program. Are you
22 familiar with those?

23 A Can you give me a reference? I am generally,
24 if you are going to ask me to name them I

1 can't sit here and name them off the top of
2 my head, but I have a general familiarity.

3 Q Compared to what--what you have proposed
4 here, would that--would that Columbia Gas of
5 Maryland's--those provisions in this tariff
6 be similar to what is being proposed here, if
7 you know?

8 A You are asking me if the provisions of
9 Columbia Gas of Maryland's certification
10 provisions are similar to Kentucky's?

11 Q Yes, what has been proposed in this Columbia
12 Gas Choice Program?

13 A I don't know. I know that our provisions
14 are--we looked at the other states, our
15 provisions most closely align the provision
16 in Ohio. I assume there is pretty much
17 crossover with what would be in Maryland, but
18 I don't know that for sure.

19 Q Could you furnish us with a copy or those
20 provisions that would apply for the Maryland
21 certification process?

22 A The Maryland certification provisions?

23 Q Yes.

24 A I think we should be able to do that.

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CHAIRMAN HELTON:

Mr. Goff, are you referring to the six items that they are going to require for credit worthiness or are you more expansive than that?

Q Under the Columbia tariff that has been proposed here, there are six items, I'm not sure if that is what they have in Maryland or not, but if they have those--whatever certification terms and conditions you have, could you furnish that to us?

A Yes. I know Maryland is a small program so we didn't rely as heavily on them, we relied more on Ohio because it is a more successful program and we were attempting to model a more successful program. But I will--

CHAIRMAN HELTON:

Could I ask a clarifying question?

MR. GOFF:

Yes, ma'am.

CHAIRMAN HELTON:

If we are going to ask it for Maryland should we ask it for the other jurisdictions and should we ask for anything additional to these six items

1 that is in the tariff filed here?

2 MR. GOFF:

3 That would--I'd be glad to--

4 Q If you can furnish those with those
5 additional other states that you are
6 participating, and if there are other items
7 other than the six that have been proposed
8 here, could you provide us with a complete
9 certification process, shall I say?

10 A Okay. The certification requirements that
11 you are referring to are on--in our tariff
12 original sheet 33, or--

13 Q I believe that is correct.

14 A I see five.

15 CHAIRMAN HELTON:

16 That may be correct, I was not looking
17 at the tariff, I'm looking at--under the
18 code, under the description of the
19 program I'm looking at the six items to
20 determine credit worthiness. So the
21 tariff may be different from those six.

22 MR. SEIPLE:

23 Your Honor, if I may interrupt for just
24 a second, I would note that in the

1 response to the Commission's Order dated
2 July 2, 1999, there was a question about
3 this, question number 35 in which we
4 provided a several page description of
5 the marketer's certification
6 requirements for the other states. We'd
7 be glad to supplement this if this does
8 not answer the Staff's questions but I
9 guess I would respectfully request that
10 perhaps they take a look at this and let
11 us know if this is sufficient and, if
12 not, we would be glad to supplement with
13 whatever is deemed necessary.

14 CHAIRMAN HELTON:

15 We'll be glad to do that, thank you.

16 Q Thank you. Ms. Cooper, the educational
17 material that you would use to inform the
18 customers about this program, have you or has
19 Columbia decided upon any particular language
20 or what it would say concerning resolution of
21 disputes? And would it specifically state
22 that the consumer may have redress of its
23 grievances with the Public Service
24 Commission?

1 A We have not decided any particular language
2 yet for our customer education program. We
3 are waiting to see the Commission's order to
4 see if we actually go forward with the
5 program. Our bills right now have the
6 customer's--the Public Service Commission
7 hotline number on there for customer
8 complaints or inquiries and that number will
9 still be on our bill. The marketer's name
10 and phone number will also be on our bill,
11 assuming we go forward.

12 CHAIRMAN HELTON:

13 Ms. Cooper, while we are waiting, could
14 we go back to the customer complaint
15 process. In much of the testimony
16 Columbia said they would like for this
17 to be as transparent to customers as
18 possible. And in the--what I have heard
19 as to how a customer would get a
20 complaint resolved, it does not seem
21 that it is as transparent as it is now.
22 Do you not think it is confusing if a
23 customer has to--they call the
24 Commission and we say, well, you need to

1 call Columbia and they say Columbia is
2 not the person who supplies my gas or
3 from whom I buy my gas, it is Stand
4 Energy or someone else. And you say,
5 yes, but we can't--they can't resolve it
6 you have to go to Columbia. Is that not
7 going to be confusing for the customer?

8 A I would assume that when a customer called
9 here that the Commission would call Columbia
10 rather than--you could tell the customer to
11 call Columbia, but I would assume that the
12 Commission complaint investigator would call
13 Columbia and it would work through that way
14 with the complaint investigator ultimately
15 calling the customer back.

16 CHAIRMAN HELTON:

17 But if the complaint investigator says,
18 okay, I'll call Columbia, you know, is
19 the customer still not going to be
20 confused because they have called about
21 Stand Energy?

22 A It is going to be an education process, with
23 our complaint people in our own office as
24 well. That is--we have to educate them first

1 because, really, before we educate our
2 customers because once we start the customer
3 education we expect customers will be calling
4 in on our customer service lines and asking
5 us, asking our Columbia representatives about
6 the program. So, those are really the first
7 people we have to educate even before we can
8 start educating customers.

9 CHAIRMAN HELTON:

10 The second question I have regards you
11 do not currently have the alternate
12 dispute resolution process set forth?
13 That is still to be determine; correct?

14 A Yes.

15 CHAIRMAN HELTON:

16 So, in the meantime if this program goes
17 forward--well, do you have a deadline on
18 when that ADR process would be
19 established?

20 A We are waiting until we ultimately have an
21 Order and we are currently thinking about a
22 time line if we go forward the things that we
23 are going to have to incorporate, but we are
24 really waiting until we have a Commission

1 decision to see what the Commission orders
2 regarding this program and whether we go
3 forward or not.

4 CHAIRMAN HELTON:

5 Well, will you commit that the ADR
6 process will be determined before the
7 program begins?

8 A The ADR process for the standards of conduct,
9 that is where that appears.

10 CHAIRMAN HELTON:

11 And for any resolution between marketers
12 and Columbia, that is a contract dispute
13 and I want to be assured that this
14 Commission has a process set forth that
15 does not put us in the problem of
16 resolving complaints between the
17 marketer and Columbia.

18 A Yes, we will commit to have that. What we
19 have in writing so far is through the general
20 counsel for Columbia with the other alternate
21 dispute resolution process that you refer to.
22 And we will work that out so we have that in
23 place so the marketers will know that before
24 they start out as well.

1 CHAIRMAN HELTON:

2 Thank you.

3 COMMISSIONER GILLIS:

4 Just a follow up, Ms. Cooper, I was
5 reading the first line, the purpose of
6 your testimony is to clarify that
7 marketers are not Columbia's agents. In
8 this process does it not appear that the
9 agents are some type of appendage of
10 Columbia whether it is marketer agent or
11 whatever? And the second part of that,
12 does Columbia really want to be in the
13 regulatory business?

14 A Well, they are not our agent. They are going to
15 be, through the aggregation agreement, they are
16 going to be individually responsible, but Columbia
17 is the vehicle between the Commission and the
18 marketer.

19 COMMISSIONER GILLIS:

20 What should we call them?

21 A I wouldn't call Columbia the regulator, maybe
22 the enforcer.

23 COMMISSIONER GILLIS:

24 I'm talking about the marketers, what

1 should we call them? I said appendage,
2 I'm not sure if not agents?

3 A They are a marketer, they are an agent for
4 Columbia's customers that participates in
5 this program, but they are simply a marketer
6 that is a competitive business operating
7 pursuant to the rules of Columbia's program
8 as set forth in the tariffs approved by the
9 Commission.

10 COMMISSIONER GILLIS:

11 And it seems a stretch for a marketer to
12 be responsible to Columbia who is the
13 regulator in that case?

14 A I don't see Columbia as the regulatory, we
15 are simply the intermediary.

16 COMMISSIONER GILLIS:

17 When the Commission has no
18 responsibility for the marketer, per se,
19 how are you the intermediary?

20 A Because you set forth in our tariffs what is
21 required of the marketers participating in
22 our program. I haven't answered your
23 question?
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COMMISSIONER GILLIS:

It still seems that Columbia is the regulator and--whether we call it that or not--and in turn the company is the marketers agency or would have to be responsible to Columbia, as you say. I'm having trouble with the process.

A They have to be responsible to abide by the terms of the program. And keep in mind that it is a limited term program, this is to go through 2004 and, you know, we will see how it works. There may need to be modifications at some point down the line, but the collaborative felt that this was the best approach to start out with in attracting marketers to the program and trying to make it a successful program and that was the ultimate goal, and to do that within the regulations and statutes that are currently in place in Kentucky. Not to say that things may change down the road, they could, and if they do, then we will deal with those at that time.

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COMMISSIONER GILLIS:

And I guess this is sort of a--what we are discussing is sort of problematic in that we have all read and are familiar with the Paradigm Gaslight Company and the travails that they have gone through and no one wants to go through that again. Consequently that--I've read in publications, that made regulators very aware and cautious, shall I say. And in trying to determine the benefits for the customers, with other problems, it seems that getting back to the question I asked Mr. Phelps again, the incentives and how a customer can win, and it seems all balled up in questions, and this being one of them, Columbia being the regulator for the agent's marketers. More of a comment than a question, it really doesn't have a question unless you'd like to respond.

A I'd just like to say that we want our customers to be happy. If they are not happy with the marketer, then we are going to welcome them back

1 as a sales service customer, and we want them to
2 be happy with whatever their decision is.

3 CHAIRMAN HELTON:

4 One of the reasons for this process
5 being set up the way it is is because
6 Columbia felt they would not get
7 marketer participation and marketers
8 said if there was certification process
9 of the Commission that there might be
10 less participation by marketers; is that
11 correct?

12 A Yes.

13 CHAIRMAN HELTON:

14 What if the terms of Columbia's tariff
15 and code of conduct, and so forth, were
16 complied with and there was a very
17 simple certification process, similar to
18 what some other states have for CLECs
19 where they simply go to the web site and
20 fill our certain information and confirm
21 that they have signed an agreement with
22 Columbia, is that going to keep
23 marketers from participating in this
24 program?

1 A I honestly don't know. The collaborative, we
2 talked about this, what the proposal was,
3 what the collaborative envisioned was the
4 most appealing, whether signing on to a web
5 site and saying, yes, as a marketer I have
6 executed an agreement with Columbia and will
7 be--have been or hoping to be certified to
8 participate in the program. I can't really
9 say what a marketer would say about that,
10 that certainly just doesn't seem to me as
11 much of a constraint as some other proposals
12 might be.

13 CHAIRMAN HELTON:

14 Any other questions?

15 VICE CHAIRMAN HOLMES:

16 I just have one. Do you know--I'm
17 looking at a file in particular--if they
18 develop the, I guess, incidence rate of
19 complaints per hundred or thousand
20 customers, what type of complaints--what
21 is the rate of complaints from that
22 Choice Program?

23 A I don't know, but if you will give me some
24 time to check.

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MR. SEIPLE:

We'd be glad to supply that.

Q Ms. Cooper, I have just one other question concerning the collaborative. I think the collaborative or it was indicated that the collaborative would determine actual over or under recovery of stranded costs or how that would be handled some time in the future. Has the collaborative made any decision or have they met to discuss this in any form or fashion since that time?

A You are talking about the over or under recovery at the end of the program from our original application?

Q Yes, that's correct.

A The collaborative has not met to discuss that and the--I believe it is referenced in previous data responses that the intent is that would be subject to all customer sales and choice type customers at the end of the program. But the details have not been established.

MR. GOFF:

I have no further questions of this

1 witness.

2 CHAIRMAN HELTON:

3 Redirect?

4 MR. SEIPLE:

5 Just a couple, thank you.

6

7

REDIRECT EXAMINATION

8 BY MR. SEIPLE:

9 Q Ms. Cooper, is the relationship between Columbia
10 Gas of Kentucky and the marketer a contractual
11 relationship

12 A Yes, a contract is required.

13 Q And that is what we call the aggregation
14 agreement, is that correct?

15 A That's correct.

16 Q And is it your position that it up to
17 Columbia to enforce that contract should a
18 dispute arise between Columbia and a
19 marketer?

20 A Yes.

21 Q Now, with regard to marketers in the Choice
22 Program, Commissioner Gillis asked you about
23 their status. Is the status of the marketers
24 in the Choice Program any different than the

1 status of the marketers who participate in
2 traditional transportation programs?

3 A Marketers that will participate in the Choice
4 Program do have certification requirements
5 which is different but, otherwise, no.

6 Q And do marketers in the traditional
7 transportation program sign an agreement with
8 Columbia in order to participate in that
9 traditional program?

10 A Yes.

11 MR. SEIPLE:

12 Thank you, that's all I have.

13 CHAIRMAN HELTON:

14 Isn't there an additional difference, Ms. Cooper,
15 in that in traditional programs you do not have
16 the company standing behind?

17 A That's true, the company will stand behind
18 for choice customers.

19 CHAIRMAN HELTON:

20 Mr. Goff?

21 MR. GOFF:

22 No questions.

23 CHAIRMAN HELTON:

24 Mr. Gillis, Mr. Holmes? Thank you Ms. Cooper.

1 Did you all have any questions? Do you have a
2 witness?

3 MR. DOSKER:

4 Mr. Borchert.

5 CHAIRMAN HELTON:

6 Would you please state your name again please?

7 A Jerry Borchert, B-o-r-c-h-e-r-t.

8 (WITNESS DULY SWORN)

9
10 The witness, JERRY BORCHERT, having first been
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DOSKER:

14 Q Good morning, Mr. Borchert, would you state your
15 name?

16 A Yes, Jerry Borchert.

17 Q And where are you employed?

18 A Stand Energy Corporation.

19 Q And what is your position with Stand Energy?

20 A I'm the Director of Regulatory Affairs.

21 Q Did you prefile testimony in this case?

22 A I submitted comments in response to Columbia's
23 prefiled testimony.

24 Q The--

1 A Excuse me, I wrote the comments and since I
2 am not an attorney, you signed it.

3 Q Right, very good. The issue that we are here
4 concerned about today, obviously, is the
5 marketers. In preparation for this hearing
6 did you review the marketer materials that we
7 have with Columbia in Ohio?

8 A Yes, I did.

9 Q Deal with, I guess, first, the standards of
10 conduct and the code of conduct, do you have
11 a copy of those--

12 A Yes, I do.

13 Q --in front of you. Is that a true and
14 accurate copy of the rules we live by under
15 the Columbia program in Ohio?

16 A Yes, it is.

17 Q I want to ask you a couple of questions about
18 those.

19 A If I may clarify one thing, the standards of
20 conduct refers to Columbia marketing
21 affiliates and the code of conduct refers to
22 independent marketers.

23 Q That is correct. Under the standards of conduct
24 which govern Columbia and its marketing affiliate

1 and their operations, is it true that the standard
2 requires a non-discriminatory application of
3 tariff provisions even if they allow discretion?

4 A Yes.

5 Q Is it true that Columbia is not allowed to
6 give any preference to any marketer,
7 including its marketing affiliate, even if
8 there is no discretion provided for in that
9 tariff?

10 A That is true.

11 Q Is it a requirement that non-tariff services
12 such as billing and envelope services are
13 priced uniformly?

14 A That's correct.

15 Q Transportation requests have to be processed
16 similarly and not discriminatorily?

17 A That is correct.

18 Q Columbia agrees not to disclose any marketer
19 information or customer information or
20 contract information; is that correct?

21 A Correct.

22 Q If a customer calls Columbia and wants to
23 know about the Choice Program, does Columbia
24 do anything other than provide a list of the

1 approved or certified marketers in Ohio?

2 A No.

3 Q They don't give a preference or an
4 endorsement to any particular company?

5 A No. Well, let's say I presume not. Not
6 working for Columbia, I don't know, but--

7 Q In your experience has that ever occurred?

8 A In my experience, no.

9 Q The code of conduct applies to marketers such
10 as Stand Energy and governs our behavior
11 under the Columbia program; is that correct?

12 A That's correct.

13 Q We are part of it. Does the aggregation
14 agreement incorporate by reference the code
15 of conduct?

16 A Yes, it does, as I recall.

17 Q So, our contract with Columbia requires us to
18 follow the rules that are contained in the
19 code of conduct?

20 A That's correct.

21 Q Does Stand Energy consider participation in
22 any choice program a legal right or a
23 privilege?

24 A It is like driving, it is a privilege.

1 Q Are we prepared to comply with reasonable
2 rules that are promulgated in order to
3 participate in any given program?

4 A Oh, absolutely.

5 Q Are there some marketers that choose not to
6 live by rules of various suppliers in various
7 states and just pack up and move out?

8 A Whether they are--choose not to live by the
9 rules, I don't know, but certainly not all
10 marketers participate in every location.

11 Q Okay. Some of the, I think, important items
12 in the code of conduct I want to ask you
13 about, are we at Stand and every other
14 marketer in Ohio required to clearly
15 communicate customer rights and
16 responsibilities to them?

17 A Absolutely. This is kind of like the new
18 insurance contracts where it has to be in
19 plain language. There is no legalese
20 involved in the customer contract. As a
21 matter of fact, in Ohio the consumers counsel
22 and the Commission review those contracts for
23 the language.

24 Q And do they routinely suggest language

1 changes?

2 A Yes.

3 Q The pricing and payment terms that we have
4 with our customers, are those required to be
5 also written and understandable as well?

6 A Yes.

7 Q Is there a prohibition against fraudulent,
8 misleading or deceptive trade practices?

9 A Of course.

10 Q Obviously, it incorporates the terms of the
11 aggregation agreement or refers to the
12 aggregation agreement which incorporates by
13 reference the code of conduct. Are we
14 required in Ohio, and other marketers as
15 well, to undergo a credit evaluation?

16 A Yes.

17 Q Does--strike that. Is there a regulatory out for
18 the customer?

19 A By regulatory out--

20 Q Would you define that please?

21 A Yes, I was just going to say I should define
22 that. There is a regulatory out in the
23 contract and that is a situation whereby the
24 customer is released from any obligation to

1 the marketer if for some reason the
2 Commission should suspend the program or
3 otherwise terminate the arrangement.

4 Q Okay. Do residential customers in Ohio have
5 the right to terminate or renegotiate their
6 contracts with marketers after the first full
7 year or service?

8 A Well, actually, yes. Typically, that is the
9 case. Sixty days prior to the end of the
10 contract we send a notice out to each
11 residential customer, or actually each
12 residential and small commercial that is
13 involved in the small gas transportation
14 program. They have 30 days to respond to us
15 whether they wish to terminate or not. They
16 have the right to go back to Columbia or
17 Cinergy or wherever, they have the right to
18 switch to another marketer at that point.
19 Typically, though, the contract would
20 automatically renew. There is a situation, I
21 know we have experienced it in the Cincinnati
22 Gas & Electric market, where the gas cost
23 recovery has been extremely low for the last
24 couple of months and it has actually cost

1 more to buy from us. Customers who have
2 called us we have just said, if you want out
3 we will let you out.

4 Q Okay.

5 A You have to understand this entire program is
6 a commercial venture. We are dealing with
7 the public, we have to respond to the public,
8 as the old saying, you can walk with your
9 feet and that is essentially what it is. I
10 think the operative word here is choice. So,
11 if a customer is not happy with my service
12 they will find some place else.

13 Q So, Stand Energy has let customers out of
14 binding contracts?

15 A Yes.

16 Q Because it was costing them more to purchase
17 their gas from Stand than from someone else?

18 A Yes, yes, we have, in fact the only place it
19 has happened has been in Cincinnati Gas &
20 Electric. It has only been for a couple of
21 months, I know, I buy gas from Stand Energy
22 myself. And over the course of the contract
23 I have saved money, it is just the last
24 couple of months I haven't. But we are not

1 going to argue with a customer if it is that
2 important to them, let them go.

3 Q Is it your opinion that that is a good
4 business decision on the part of Stand Energy

5 A Oh, absolutely, I'd rather have a happy
6 customer than an unhappy customer.

7 Q Do you think it is more likely in the future
8 that when that customer goes shopping again
9 for gas rates that he might call us and
10 inquire what are our prices?

11 A We have had some call back, sure.

12 Q Talk about complaints. Tell me, tell the
13 Commission about your experiences at Stand
14 with customer complaints in the Choice
15 Program?

16 A From my experience the complaints have been
17 fairly negligible from my perspective. Most
18 of the ones that I have seen are when new
19 customers first switch over, and take it in
20 terms of Columbia Gas, customers in the
21 Columbia Gas of Ohio system have been used to
22 receiving a bill with a bundled rate. With a
23 footnote that says this includes a gas cost
24 recovery of a certain amount. When they join

1 the transportation program the distribution
2 fee and the commodity fee are separated. So,
3 that becomes a change that is sometimes
4 difficult to understand. The calls that we
5 get are, well, this is terrible, Columbia is
6 charging me extra money. And we have a good
7 staff that is very patient, explains to them
8 that, no, they have been paying this all
9 along, it is just that they haven't seen it
10 broken out before. In fact, they are saving
11 quite a bit of money. I think we have been
12 running about 18% to 20% annually in the
13 Columbia Gas of Ohio system.

14 Q In terms of other marketers, certainly not
15 Stand Energy, but what other types of
16 complaints have you seen in Ohio, not
17 necessarily on Columbia but on any of the
18 operating systems?

19 A There were a number of complaints initially
20 about door to door solicitations. There was
21 a problem at one point and I think that has
22 been pretty well squelched.

23 Q Well, what was the problem and how was it
24 dealt with, if you know?

1 A I'm not sure. This was something that was
2 handled behind the scenes, OCC at the--the
3 Consumers Counsel, I believe.

4 Q Is the--okay, is the marketer still active in
5 Ohio?

6 A Yes.

7 Q So, the Commission apparently was satisfied
8 with the resolution of the process?

9 A Yes.

10 Q If you know, does Stand Energy have any objection
11 to being--philosophical objection to being
12 regulated by the Commission?

13 A I think we have a philosophical objection, I
14 believe that by signing the aggregation
15 agreement with Columbia, which incorporates
16 the code of conduct that there is sufficient
17 oversight. I think our position is that we
18 are an independent marketer, we don't want to
19 get into the regulatory game, and I use that
20 term with utmost respect, of course. But I
21 don't really see it as an issue because,
22 again, if we are going to be marketing--I
23 think I mentioned this in previous testimony,
24 that the marketers who take part in these

1 programs are not fly by night operations,
2 they are not here to skin the fattened calf.
3 We are here to provide a service and if the
4 service is not being provided, the customers
5 will answer appropriately.

6 Q One of the questions from the Commission
7 earlier was about Commission participation in
8 the certification process. In your
9 experience, would you say that most marketers
10 don't voluntarily participate in most
11 Commission proceedings that might affect
12 them?

13 A I would say from my experience that that is
14 pretty much the case. There are some of the
15 very large marketers are regular. I think,
16 just from my experience, 13 years with the
17 Public Utilities Commission of Ohio, I think
18 Stand Energy has taken part in more cases
19 than most marketers have.

20 Q Do we currently have a complaint case pending
21 against Cincinnati Gas & Electric in the
22 Public Utilities Commission of Ohio?

23 A Yes, we do.

24 Q Is it your opinion that we have a fairly strong

1 case upon which we based that complaint?

2 A I think so, yes.

3 Q Did you not attempt to get other marketers who
4 were similarly situated and affected to join our
5 action again CG&E?

6 A I suggested to it because there were many similar
7 situated marketers. I can go back to a situation
8 that occurred probably seven or eight years ago,
9 coming out of a Commission hearing in Columbus one
10 of the commissioners said, you know, it is
11 interesting that there is a consumers counsel that
12 takes care of residential customers and there are
13 the big law firms that take care of the big
14 industrial customers, but Stand Energy is the only
15 one that comes to the plate for the guys in the
16 middle. And that is what we have done.

17 Q Were the other marketers in the Cincinnati
18 area that you contacted, were any of them
19 interested in participating in our case?

20 A Only to see how it came out. There is no
21 sweat equity involved.

22 Q Right. Are there legal and other costs associated
23 with Commission dealings?

24 A Yes, of course.

1 Q How many of the other marketers in Ohio are
2 you aware of that have on-staff lawyers?

3 A None that I can think of.

4 MR. DOSKER:

5 I think that's all the questions I have
6 at this time.

7 CHAIRMAN HELTON:

8 Any friendly cross?

9 MR. SEIPLE:

10 I have a little bit of cross.
11

12

CROSS EXAMINATION

13 BY MR. SEIPLE:

14 Q Mr. Borchert, you were asked a number of questions
15 about the Ohio program. In Ohio does Stand Energy
16 consider itself to be an agent of Columbia Gas of
17 Ohio?

18 A No.

19 Q Have you reviewed the application and
20 supporting attachments in the Kentucky
21 application?

22 A Yes, I have.

23 Q Under those documents, as you understand
24 them, would you consider Stand Energy to be

1 an agent of Columbia Gas of Kentucky were
2 Stand to sign the aggregation agreement and
3 participate in the program?

4 A No. I looked at--I see it as an--that we are
5 an agent for the customer.

6 MR. SEIPLE:

7 Thank you, that's all I have.

8 CHAIRMAN HELTON:

9 Mr. Goff?

10

11

CROSS EXAMINATION

12 BY MR. GOFF:

13 Q Mr. Borchert you--could you tell us what the
14 nature of that complaint was between Stand and the
15 Cincinnati utility

16 A Well, we have been to hearing so I guess I
17 can discuss that.

18 MR. DOSKER:

19 You're under oath.

20 A Yes. Cincinnati Gas & Electric in their
21 Customer Choice Program issued to each
22 marketer a daily nomination quantity of gas
23 for that particular marketer's pool. During
24 the course of the season CG&E made

1 significant errors in their forecast. We, in
2 fact, forecasted better what our customers
3 needed and prepurchased gas based on our
4 projections. At the end of the season we
5 were considerably short and Cincinnati Gas &
6 Electric would not let us deliver the gas
7 that we had repurchased, so we had to sell it
8 at a loss on the open market. And then when
9 it came to the end of the year when they
10 said, well, we were something in the
11 neighborhood of 68,000 dekatherms short of
12 what our pool actually used, they said, well,
13 now pay me back. And this happened the last
14 August and September when gas was at a
15 historically high price. So, we sold at a
16 loss low price gas and had to pay them back
17 high price gas. We basically filed a
18 complaint seeking damages that their
19 inaccuracy caused us to harm. So, that is
20 the nature of the complaint.

21 Q That was part of the--been part of a
22 contract, would that be termed a contract
23 dispute between yourself and the utility?

24 A In a manner of speaking, insofar as the

1 contract specified that CG&E would tell us
2 each day how much to deliver. And it wasn't
3 until after the fact that they said, oh, we
4 made a mistake.

5 Q Was that part of the--was that included in
6 the tariff for the participation of the
7 marketer?

8 A The tariff that was in effect at the time
9 called for quarterly reconciliations. CG&E,
10 prior to the start of the period in question,
11 had filed with the Commission a new tariff
12 that called for annual reconciliations. That
13 tariff was not approved until about four
14 months ago. But they unilaterally decided
15 they were going to go to an annual
16 reconciliation. We said the tariff said
17 quarterly you should have found this mistake
18 earlier. And even as much as two months
19 after the end of the period they still didn't
20 have accurate numbers.

21 Q Well, based upon your prior testimony that
22 you don't think that this Commission would
23 have regulatory control over you, if that
24 were to happen in this tariff, how would

1 that--would you expect that to come before
2 the Commission here?
3 A Could you clarify that please?
4 Q Would that be part of the--is that any part
5 of the tariff that is now proposed before the
6 Commission here in Kentucky?
7 A Not that I'm aware of.
8 Q Okay.
9 A The situation in Cincinnati--
10 Q That was a unique situation to that
11 particular jurisdiction?
12 A I'm not sure that that is accurate. I think
13 Columbia tells us how to send in each day
14 too, but they are more accurate on it. In
15 this particular case we had contracted with
16 CG&E, CG&E is regulated by the Public
17 Utilities Commission of Ohio. Lacking any
18 resolution in our individual negotiations
19 with CG&E and, quite frankly, they admitted
20 that they couldn't pay us back our losses
21 without some kind of ruling. They just can't
22 do that because that would come out of the
23 ratepayers. So, that is what forced us to
24 take it into a complaint case before the

1 Commission. So, our challenge was against a
2 regulated utility.

3 CHAIRMAN HELTON:

4 Are you seeking a ruling from the Ohio
5 PUC before you take Cincinnati to court
6 or are you seeking a ruling from them
7 and there are provisions in the contract
8 for them to pay any penalties?

9 A There are provisions in the contract to pay
10 penalties. I think that our resolution will
11 lie with the Commission. I don't think--our
12 attorney would have to answer that question,
13 I don't think that civil court is a proper
14 venue.

15 MR. DOSKER:

16 And I believe, if I may, I believe the
17 issue was tried to the Commission with
18 the mutual agreement of both parties. I
19 mean, CG&E never objected to the
20 jurisdiction of the Commission to
21 address or remedy the issue. Jerry
22 correctly--Mr. Borchert correctly
23 testified that CG&E's position was,
24 Stand you may be right, but even if we

1 agreed with you we couldn't write you a
2 check. It requires a Commission Order
3 because the monies would end up coming
4 out of rate base. In terms of whether
5 it is contract or something else, I was
6 kind of unclear on that issue as well,
7 and so I framed our case in terms of
8 both breach of contract and in terms of
9 tort law that they had--that CG&E had,
10 whether intentionally or negligently,
11 done something to us that had injured
12 us. And so, I pursued both theories in
13 the hearing and I believe proved all of
14 the necessary elements on both theories.
15 Could we have filed in the Court of
16 Common Pleas, which is the court of
17 general jurisdiction in Ohio, answer
18 probably, yes, but it was a whole lot
19 cheaper to do it in the Commission and
20 CG&E did not object. So, that's how it
21 happened.

22 Q Mr. Borchert, I take it from the testimony, then,
23 that the Ohio Regulatory Commission took
24 jurisdiction of that and--rather than the--thought

1 it had to take jurisdiction. Would that be a fair
2 statement?

3 A Can clarify that, took jurisdiction of what?

4 Q Of this dispute, of this contract dispute
5 between Stand and the utility.

6 A Insofar as, as John has pointed out, CG&E
7 could not just write us a check for the 85 or
8 \$90,000 that was involved without some kind
9 of adjudication. And so, in that context we
10 initiated the complaint against CG&E. The
11 Commission elected to hear it, albeit later
12 than we had hoped, so that is where it
13 stands.

14 CHAIRMAN HELTON:

15 So, what if CG&E had not agreed that the
16 Commission was an appropriate form for
17 it?

18 A Then I think civil court would have been the
19 logical next step.

20 Q In the tariff aggregate agreement Columbia
21 requires the marketer to provide certain
22 information. Toll free or local phone number for
23 account information and ways to resolve disputes
24 with a marketer, a copy of the dispute resolution

1 method with a name and phone number of the
2 contract person--of the marketer and either the
3 company or PSC made contact, the customer--copy of
4 the customer consent form and tape or an e-mail of
5 the--if it is done by tape or e-mail, phone or e-
6 mail, and there is also provision for copy of the
7 uniform information material that a marketer will
8 presumably send to the perspective customer and a
9 copy of a standard contract; is that a fair
10 statement of what you would be required to provide
11 under the aggregation agreement?

12 A There is a lot of stuff in there, but that
13 sound pretty close. The one thing I probably
14 didn't mention before but, also, on the
15 customer's bills, once they have made the
16 transition, there is a little annotation that
17 says--I believe it is on Columbia's, I know
18 it on Cincinnati Gas & Electric--says your
19 supplier is Stand Energy Corporation and a
20 toll free phone number. And in the case of a
21 new customer enrolling in the program we have
22 to maintain records with a signature on file.
23 If the customer calls in or phones in we have
24 to, first of all, have it digitally recorded

1 with time and date stamp, it is part of the
2 process, also is, that we have to ask the
3 customer on the tape did you initiate this
4 call or did we call you. As a marketer we
5 cannot initiate the call to a residential
6 customer. So, there is no slamming involved
7 in this one. The customer has to positively
8 state I initiated this call.

9 Q Yes, sir. The reason I was asking, I kind of
10 went over those as--but you furnish a phone
11 number, who to contact, and you have a form,
12 a standard contract form and your customer
13 consent form?

14 A That's correct.

15 Q And I asked you that in regard to your stated--
16 saying that marketers were reluctant to be subject
17 to the regulatory processes. But if the
18 Commission, as part of its belief that it does
19 have some regulatory control over marketers,
20 required marketers to submit to the Commission
21 those specific items as part of this regulatory
22 oversight, do you think that Stand or other
23 marketers would have any objection or opposition
24 to that? Let me say, those are the--as far as I

1 can tell those are the specific items which you
2 would already be required to submit to Columbia
3 under the terms of the aggregation agreement?

4 A I think from a philosophical standpoint I might
5 have a problem if the Commission attempts to
6 assert direct jurisdiction. I think the mechanism
7 is in place through the tariff and through the
8 aggregation agreement that Columbia is the
9 intermediary and that if the Commission approves
10 the language that Columbia proposes and if I, as a
11 marketer, sign the contract in accordance with the
12 language that has been approved, that that is
13 sufficient oversight. I'm not sure if I answered
14 your question.

15 Q I'll take that as really that you would be
16 opposed to the Commission entering an order
17 to that effect?

18 A I think so. I think that in a free market
19 that we have to establish a dividing line
20 between who is regulated and who is not, and
21 I don't think an independent marketer is
22 regulated. If the Commission asserts that
23 jurisdiction I doubt if there will be much
24 participation; however, if the jurisdiction

1 goes through Columbia and is filtered down
2 through their contract and through their
3 aggregation agreement, I think there will be
4 robust participation.

5 Q In regard to that, is it your--Stand's position
6 that any and all complaint procedures would have
7 to--would go through Columbia and not be directed
8 to the marketer?

9 A Most complaints are addressed to the marketer
10 in the first place. And certainly some
11 customers may have the Columbia number on
12 their refrigerator and call there first but,
13 again, most of the complaints that we have
14 found are very minor in nature. Usually it
15 is misunderstandings. Quite frankly, we get
16 an inordinate number of calls from,
17 obviously, elderly people who just want to
18 talk on the telephone and our staff will sit
19 with them and talk as long as they want.
20 But, normally, they will come to the marketer
21 first.

22 Q If there were no resolution at the marketer
23 level or at Columbia's level, and this
24 Commission wanted to have you directly

1 respond to the complaint, would you do so?
2 A Absolutely. Although I think you are probably
3 taking something to an extreme here. I have never
4 heard of a case that has not been resolved at the
5 local level. I review the docketing section of
6 the Public Utilities Commission of Ohio and also
7 in Kentucky, I have not seen a case where a
8 customer has taken the gas marketer to complaint.
9 Now, there are a lot of telephone cases, but I
10 haven't seen a gas one other than several cases
11 that are pending for inappropriate discontinuation
12 of service, which certainly is not a marketer
13 issue anyhow.

14 MR. GOFF:

15 No further questions of this witness.

16 CHAIRMAN HELTON:

17 Redirect?

18 MR. DOSKER:

19 Just a little bit.

20
21 REDIRECT EXAMINATION

22 BY MR. DOSKER:

23 Q Mr. Borchert, in terms of the CG&E complaint case,
24 the tariff and the aggregation agreement that we

1 have, that Stand has with Cincinnati Gas &
2 Electric, were those approved by the Public
3 Utilities Commission of Ohio?

4 A Yes, they were.

5 Q And since our complaint was based on the
6 application and operation of the methods and
7 processes described in those documents, was that
8 part of the reason we felt like the Commission
9 should be involved in the complaint process as
10 well?

11 A Yes.

12 Q Does the Public Utilities Commission of Ohio have
13 they stated in the past that they have an interest
14 in promoting fair competition among marketers and
15 suppliers in Ohio?

16 A Yes, they have.

17 Q Has it--is it your opinion from what you have
18 seen out of the Public Utilities Commission
19 of Ohio that they take that responsibility of
20 maintaining a level playing field very
21 seriously?

22 A Yes, I would say so. In fact, in their staff
23 evaluation of the three primary programs in
24 Ohio, Columbia, Cincinnati Gas & Electric and

1 East Ohio Gas, they were very candid in their
2 praise and also their criticisms.

3 Q Would CG&E be a utility in Ohio that is more
4 routinely praised or criticized by the
5 Commission, recently?

6 A Recently, I'd say more criticized than
7 praised.

8 Q Thank you. Regarding Commission jurisdiction over
9 marketers, is Stand Energy--and I know this is a
10 legal question and you are not a lawyer but to the
11 extent you are experienced in the industry--is
12 Stand Energy a utility in Kentucky?

13 A Well, in the comments that I wrote I cited
14 the statute. By my definition I would say
15 no, we are not a utility. I think there is
16 some specific language regarding the
17 transportation and facilities, so under those
18 circumstances I would say that we are not a
19 utility.

20 Q If a legislator in Kentucky proposed amending
21 the statute to change the definition of a
22 utility to include marketers--now, I know you
23 can't speak for Stand Energy--but would you
24 personally object to that?

1 A I would, yes, and I think that Stand Energy
2 would probably get involved too.

3 Q Well, is it true that we bend over backwards
4 to resolve customer complaints?

5 A I would say that is correct.

6 Q And is it true that we do that to maintain
7 both our relationship with our customers and
8 our relationship with Columbia or the
9 supplier?

10 A Yes. I probably left something out a little
11 while ago, I'd rather have a happy ex-
12 customer than an unhappy current customer.

13 Q Are--in terms of our relationship with the various
14 suppliers, is our ability to do business behind
15 those systems dependent on our relationship with
16 those suppliers?

17 A Suppliers or utilities?

18 Q I'm sorry, with the utilities?

19 A Let's say that our relationship can ease the
20 way when there are--when problems arise.
21 But, technically, by the tariff they can't
22 reject service from anybody just because they
23 don't like them.

24

1 MR. DOSKER:

2 That's all the questions I have.

3 CHAIRMAN HELTON:

4 Mr. Gillis?

5 COMMISSIONER GILLIS:

6 Mr. Borchert, I'm sorry, what was your title
7 again?

8 A Director of Regulatory Affairs, I push paper.

9 COMMISSIONER GILLIS:

10 I thought I read part of your testimony was that
11 Stand does not want to be in the regulatory game.
12 Do you get anything to do?

13 A Well, in the case of the complaint against CG&E I
14 did most of the work up on that and wrote the
15 complaint. Again, I'm not an attorney so I can't
16 sign it and I can't file it but I do a lot of
17 that. I also sit there and read--wade through the
18 FERC bulletin boards and PUCO bulletin boards and
19 Kentucky Public Service Commission bulletin
20 boards, recognizing that the entities that we deal
21 with are regulated.

22 COMMISSIONER GILLIS:

23 As far as getting customers, you were asked a few
24 questions a while ago as far as how you all get

1 customers. Do you all buy blocks of customers
2 from CG&E or Columbia or do you get referrals from
3 Columbia or CG&E? If a retail customer has to
4 call you, what makes them want to call you?

5 A In some cases the fact that they have a choice.
6 There are--I think I testified at the last hearing
7 that there are some customers that are going to
8 stay with the utility no matter what. There are
9 other customers who are going to leave no matter
10 what. There is some in the middle that just want
11 to shop around, and they make no bones about it,
12 they say I'm going down the list. I saw it on the
13 Commission bulletin board, here is the apples to
14 apples to chart which has all the approved
15 marketers that are operating in that system and
16 they are just calling to see what is there. And
17 sometimes they will call and say I want to sign
18 up. Sometimes they will say I'm going to look
19 into it a little further, and that's their choice.

20 COMMISSIONER GILLIS:

21 Why do they switch?

22 A Usually it is for a better price. Again,
23 there is a certain faction that say, I don't
24 care, I'm not going to take gas from that

1 utility any more and they will just change
2 for that.

3 COMMISSIONER GILLIS:

4 But price is the only thing, you don't give
5 toasters away, do you?

6 A No, no toasters.

7 MR. GOFF:

8 I have one.

9 CHAIRMAN HELTON:

10 I have one.

11 MR. GOFF:

12 Oh, I'm sorry.

13 CHAIRMAN HELTON:

14 Your counsel asked you about the--stand at Ohio
15 Public Utility Commissions on competition. You
16 are not alleging here that the circumstances are
17 the same between Ohio and Kentucky where we don't
18 have a big disparity in price and, therefore,
19 there is not as much of a demand for competition
20 in Kentucky as there was in Ohio, are you?

21 A I really can't speak for Kentucky, I mean,
22 even in Ohio there is a wide range of
23 pricing. If I'm in Columbus I can save a lot
24 of money; if I'm Cincinnati, I'm losing

1 money; if I'm in Cleveland the program isn't
2 even available. But, certainly, different
3 areas of the state, of any state, and
4 different utilities will have different
5 operating procedures. And I think during the
6 collaborative that concluded about two years
7 ago one of my comments at that time was that
8 this can't be a cookie cutter approach.
9 Every utility has their own system. I think
10 one of the very noteworthy ones was Glenn
11 Jennings from Delta who described his
12 particular operating system and the
13 requirements of that system. I said, okay,
14 that is different than what might happen at
15 Louisville Gas & Electric, what might happen
16 at Union Light Heat & power, what might
17 happen at Western Kentucky Gas or Columbia
18 Gas of Kentucky. So, I don't think--I think
19 every utility has to establish a program, if
20 they are going to take part, a program that
21 is suitable to their own system.

22 CHAIRMAN HELTON:

23 But there was customer interest expressed in Ohio?
24 A Once the program was rolled out, sure. In

1 Ohio it started with--in the Toledo area only
2 and then Columbia Gas of Ohio asked the
3 Commission for approval to roll out statewide
4 and that did happen. So, now it is available
5 throughout the Columbia Gas of Ohio system.

6 CHAIRMAN HELTON:

7 But the program started in Toledo because the gas
8 price there was higher than other parts of the
9 state; is that correct? There was a demand
10 because of that?

11 A To some extent, yes.

12 CHAIRMAN HELTON:

13 Mr. Goff?

14

15

RECROSS EXAMINATION

16 BY MR. GOFF:

17 Q Mr. Borchert, I think you stated that Stand did
18 not consider itself an agent of Columbia,
19 especially in this program.

20 A In any program.

21 Q That you were really--in any program--you are
22 an independent entity of marketer of natural
23 gas?

24 A Yes.

1 Q And you also stated that you didn't think that you
2 came under the statutory provisions to be
3 regulated?

4 A In Ohio we don't.

5 Q Okay. Are you familiar with the Kentucky
6 statutes, specifically the certification
7 statutes 278.020 where it says that no person
8 or corporation shall commence providing
9 utility service to or for the public until
10 it--unless it obtains a certificate?

11 A I'm not familiar with that, I'll read it when
12 I get back to my office. But, again, I don't
13 believe we are providing utility service, we
14 are providing a commodity. The utility
15 service is the distribution site.

16 Q Are you basing that upon your belief or are
17 you basing that upon some statutory directive
18 that you can point us to?

19 A No, that is my belief and it is my
20 interpretation of--and, again, I don't have
21 my comments that I filed in this case, but I
22 did cite the statute. I believe the utility
23 entails facilities, pipes of pertinent
24 facilities.

1 Q What we are talking about, certification of
2 one who commences providing utility service
3 to the public, then it goes on to say--it
4 talks about plan and things of that nature.
5 Do you not think that the--those--that
6 language in there would include a marketer of
7 natural gas?

8 A By my interpretation, no.

9 MR. GOFF:

10 That's all I have.

11 CHAIRMAN HELTON:

12 Anything else? Thank you Mr. Borchert. Any other
13 matters to come before the Commission? I don't
14 have the procedural schedule in front of me, is
15 there any provision for filing briefs?

16 MR. GOFF:

17 I don't believe there was.

18 CHAIRMAN HELTON:

19 There being nothing further, this hearing is
20 adjourned.

21 (OFF THE RECORD)

22

23

24

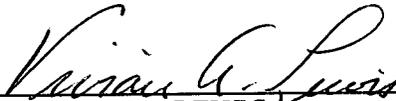
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CERTIFICATE

STATE OF KENTUCKY)
COUNTY OF FRANKLIN)

I, VIVIAN A. LEWIS, a Notary Public in and for the state and county aforesaid, do hereby certify that the foregoing testimony was taken by me at the time and place and for the purpose previously stated in the caption; that the witnesses were duly sworn before giving testimony; that said testimony was first taken down in shorthand by me and later transcribed, under my direction, and that the foregoing is, to the best of my ability, a true, correct and complete record of all testimony in the above styled cause of action.

WITNESS my hand and seal of office at Frankfort, Kentucky, on this the 8th day of May, 2000.


VIVIAN A. LEWIS
Notary Public
Kentucky State-at-Large

My commission expires: 7-23-01

Nivian F. Lewis

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

Col. Rehearing
EXHIBIT NO. 1
V. LEWIS

In the Matter of:)
)
THE TARIFF FILING OF COLUMBIA GAS OF)
KENTUCKY, INC. TO IMPLEMENT A SMALL)
VOLUME GAS TRANSPORTATION SERVICE,)
TO CONTINUE ITS GAS COST INCENTIVE)
MECHANISMS, AND TO CONTINUE ITS)
CUSTOMER ASSISTANCE PROGRAM)

CASE NO. 99-165

Rehearing
Testimony

PREPARED TESTIMONY ON REHEARING
OF SCOTT D. PHELPS
ON BEHALF OF
COLUMBIA GAS OF KENTUCKY, INC.

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March 16, 2000

Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

PREPARED TESTIMONY ON REHEARING OF SCOTT D. PHELPS

1 Q: Please state your name and business address.

2 A: Scott D. Phelps, 200 Civic Center Drive, Columbus, Ohio 43215.

3

4 Q: By whom are you employed?

5 A: I am employed by Columbia Gas of Kentucky, Inc. ("Columbia").

6

7 Q: What is your position with Columbia?

8 A: I am Director, Gas Procurement for Columbia.

9

10 Q: Did you testify earlier in this proceeding?

11 A: Yes.

12

13 Q: Has your testimony regarding your educational background and qualifications changed
14 since offering that testimony?

15 A: No.

16

17 Q: What is the purpose of your testimony?

18 A: The purpose of my rehearing testimony is first to explain why the Commission should
19 approve Columbia's gas incentive program through the term of the pilot. Second, I will
20 explain why the Commission should reconsider its decision to credit the customers'
21 share of capacity release revenues to gas costs instead of stranded costs as the
22 modification creates a disincentive to marketer participation.

1 Q: Why does Columbia believe it to be important to retain the incentive program?

2 A: Columbia believes that the incentive programs are necessary to help ensure the success of
3 Columbia's proposed Customer Choice program. They will provide the incentive
4 necessary for Columbia to achieve greater results in these developing markets upstream
5 of the city gate, which can add value to the services Columbia provides its customers.
6 The revenue earned with Columbia's off system sales and capacity release efforts will
7 benefit customers through mitigation of stranded costs that are created in an effort to
8 provide customers a choice in gas suppliers. The effect of this non-traditional revenue as
9 a source for stranded cost mitigation is an important benefit to our customers, because it
10 helps to defer the need for implementation of Phase II of the Choice program, wherein
11 pipeline capacity is assigned to marketers on a mandatory basis. Deferring or preventing
12 that event will allow for both greater marketer and customer participation, and enhance
13 the opportunity for greater customer savings in the Choice program.

14
15 In order for revenues to be generated, Columbia must devote resources to the task.
16 Columbia must compete in increasingly competitive markets upstream of the city gate.
17 Product ideas and sales don't just appear on the doorstep. Columbia must determine its
18 flexibility and capability to market different off system sales products on an ongoing
19 basis, and then proactively go out into the market and find buyers, manage the
20 transaction, invoice and collect the revenue. Our competition includes major wholesale
21 marketing companies, the interstate pipelines, and other local distribution companies like
22 Columbia, each with a profit incentive. The incentives authorized previously by the
23 Commission have been critical to Columbia's efforts in these areas.

1 One assumption imbedded in Columbia's financial model for the Choice program was
2 that the incentive program for Columbia's non-traditional off system sales and capacity
3 release efforts would continue. In the Commission's model, these incentives for
4 Columbia were eliminated, yet the total revenue from off system sales and capacity
5 release were left unchanged. Columbia believes that incentives influence behavior, and
6 make a difference in results.

7
8 Q: How does Columbia's success in its off system sales and capacity release programs cause
9 other participants to experience a better Choice program?

10 A: There is a direct connection between Columbia's success at generating off system sales
11 revenues and whether or not the mandatory assignment portion of the program will need
12 to be implemented. Likewise, there is a direct connection between Columbia's success at
13 generating off system sales and capacity release revenues and whether or not customers
14 will be asked to fund the stranded cost pool at the end of the program. Columbia's
15 success in its off system sales and capacity release efforts will result in the delay or
16 suspension of the mandatory capacity assignment phase of the Choice program.
17 Therefore, with productive incentive results, more marketers will participate and more
18 customers will have the opportunity to save on their gas bills.

19
20 Q: Why did the Collaborative feel that it was important to design a program that provided
21 benefits and incentives for all of the participants?

22 A: The Collaborative and Columbia recognize that transition, and changing the way
23 customers think about their choices and services, is not easy. For this reason, Columbia

1 and the Collaborative believe that in order to help ensure a successful Customer Choice
2 program, every participant in the program, including Columbia, needs an incentive to
3 participate and to contribute to the success of the program.

4
5 Q: What are the proposed incentives for the various participants?

6 A: For customers that choose to participate in the program, the incentive is the possibility of
7 reduced costs and just as importantly for some, the right to choose among different
8 suppliers and pricing options for their gas supply. For customers that continue to choose
9 Columbia as their supplier, the incentive or benefit is still the right to make that Choice.
10 The right of choice itself is no less a benefit simply because the customer chooses to
11 continue purchasing from Columbia. For marketers, the incentive is the opportunity to
12 gain market share behind an LDC that removes barriers to choice. Proposing
13 constructive, innovative, and customer friendly methods for dealing with capacity
14 assignment, billing, arrearages, and the like are examples of how Columbia's proposed
15 program provides this opportunity.

16
17 The incentive for Columbia in the Choice filing was an opportunity to extend its
18 authorized incentive program by expanding it outside its traditional boundaries. As
19 presented above, Columbia's incentives by their nature benefit our customers as well as
20 Columbia. Columbia believes that its incentive program is particularly valid at this time
21 because Columbia's own success with incentives will directly benefit not only its
22 customers, but also the proposed Choice program.

1 Q: In its Order granting rehearing, the Commission agreed to reconsider whether capacity
2 release revenues should be credited to gas costs or stranded costs. Do you wish to
3 comment on that issue?

4 A: Yes. There is good reason to direct capacity release revenue to the stranded cost pool.
5 Most of the revenue forecasted in the financial model filed by Columbia is attributable to
6 capacity stranded as a direct result of the Choice program. In fact, approximately 83% of
7 the revenue reported is the direct result of releasing capacity not taken by Choice
8 marketers to serve their customers. As Choice marketers are not taking capacity from
9 Columbia to serve their customers, but are in fact removing customers from Columbia's
10 firm demand capacity pool, the capacity that Columbia is left with will be released, and
11 will generate revenue as a direct result of participation in the Choice program. Since
12 capacity rejected by Choice marketers provides the bulk of the revenue, the mitigation
13 achieved should reduce the stranded cost pool. To credit such revenue to gas costs will
14 artificially reduce gas costs to sales customers, making entry into the market more
15 difficult for the Choice marketers. Therefore, Columbia requests that capacity release
16 revenue be credited to stranded costs instead of to gas costs.

17
18 Q: Given the modifications made to the proposed program by the Commission, does
19 Columbia need to adjust its approach to calculating stranded costs?

20 A: Yes, the change in treatment of contracts that can be terminated requires Columbia to
21 modify its approach to this calculation.

22
23 Q: How does Columbia plan to calculate stranded costs of the revised Choice program?

1 A: Each month, Columbia will allocate a proportionate share of its firm contracted capacity
2 sufficient to meet the peak day requirement of its sales customers. The remaining
3 capacity will be the proportionate quantity associated with the Choice customers'
4 requirements; that capacity will be the stranded capacity. Applicable demand charges will
5 be used to determine the stranded cost related to firm pipeline contract demand.

6
7 Q: What does Columbia request the Commission do with regard to the off system sales and
8 capacity release incentive programs?

9 A: In recognition that incentives for Columbia will help facilitate a successful Choice
10 program, Columbia requests that the Commission approve the continuation of
11 Columbia's incentive programs for capacity release and off system sales as provided for
12 in Columbia's filing. Incorporating the revisions addressed herein, Columbia's proposed
13 program will provide appropriate incentives for all participants while maintaining a near
14 equal balance of stranded costs and revenue opportunities and the end of the program.

15
16 Q: Does that conclude your rehearing testimony?

17 A: Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Prepared Direct Testimony of Scott D. Phelps was served upon all parties of record by regular U.S. Mail this 16th day of March, 2000.

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- 65% > 100%
- 83% of Capacity Release Rev Results from Choice
- The financial model is now balanced.
 - Terminated Contracts
 - Incentive Program
 - 1% greater participation

• Example Problem

Choice Participation 24%

$$\frac{\text{Stranded Capacity} - \text{Cancelled Capacity}}{\text{Total Capacity} - \text{Cancelled Capacity} - \text{Local}} = 15\%$$

= The amount of FTS and SST to Strand.
/FSS

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 16 2000

PUBLIC SERVICE
COMMISSION

In the Matter of:)
)
THE TARIFF FILING OF COLUMBIA GAS OF)
KENTUCKY, INC. TO IMPLEMENT A SMALL)
VOLUME GAS TRANSPORTATION SERVICE,)
TO CONTINUE ITS GAS COST INCENTIVE)
MECHANISMS, AND TO CONTINUE ITS)
CUSTOMER ASSISTANCE PROGRAM)

CASE NO. 99-165

Col. Rehearing
EXHIBIT NO. 2
V. LEWIS

PREPARED TESTIMONY ON REHEARING
OF JUDY M. COOPER
ON BEHALF OF
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Attorneys for
COLUMBIA GAS OF KENTUCKY, INC.

March 16, 2000

PREPARED TESTIMONY ON REHEARING OF JUDY M. COOPER

1 Q: Please state your name and business address.

2 A: Judy Cooper, 2001 Mercer Road, Lexington, Kentucky.

3

4 Q: By whom are you employed?

5 A: I am employed by Columbia Gas of Kentucky, Inc. ("Columbia").

6

7 Q: What is your position with Columbia?

8 A: I am Manager of Regulatory Services.

9

10 Q: What is your educational background?

11 A: I received a Bachelor of Science degree in Accounting from the University of Kentucky
12 and a Masters in Business Administration from Xavier University.

13

14 Q: Please describe your employment history with Columbia.

15 A: I began my employment with Columbia in July 1998 in my current position. I am re-
16 sponsible for regulatory activities before the Kentucky Public Service Commission.

17

18 Q: Please describe your previous employment history.

19 A: I was previously employed by the Kentucky Public Service Commission from 1982 until
20 July 1998. At the time of my departure, I was the Director of Financial Analysis. Previ-
21 ously I held positions as Branch Manager, Rates and Tariffs Division, Electric and Gas
22 Rate Design, Energy Program Coordinator, Rate Analyst and Auditor.

Q: What is the purpose of your rehearing testimony?

2 A: The purpose of my rehearing testimony is to clarify that marketers are not Columbia's
3 agents. Marketers are agents of their customers. Further, my testimony will demonstrate
4 that the Commission can exercise regulatory oversight of marketers without finding that
5 the marketers must be Columbia's agents.

6
7 Q: What is an agent?

8 A: An agent is one that acts for or as the representative of another, according to the Ameri-
9 can Heritage Dictionary.

10
11 Q: Why is it inaccurate to state that marketers are Columbia's agents?

A: It is inaccurate to state that marketers are Columbia's agents because marketers will not
13 act for or as a representative of Columbia. Marketers will not purchase gas or sell gas on
14 behalf of Columbia. Rather, under Columbia's proposed program, marketers will repre-
15 sent end-use customers and will aggregate supplies for numerous customers in compli-
16 ance with Columbia's transportation tariffs. Under Columbia's proposed tariffs, each
17 Choice customer will take title to gas at the point and time it is delivered to Columbia's
18 city gate. From that point to the burnertip, deliveries must follow the rules of the tariff.
19 Choice customers will utilize marketers to purchase gas and arrange for transportation
20 and delivery service on the customer's behalf.

21
22 Q: Doesn't Columbia refer to marketers as agents in its proposed form of aggregation
agreement?

1 A: Yes, but that designation of agency is intended to represent the relationship between end-
2 use customers and marketers, not marketers and Columbia. Original Sheet No. 33 of
3 Columbia's proposed tariff establishes the agency relationship between marketers and
4 end-use customers wherein it states that aggregation service is only available to marketers
5 that are acting "on behalf" of small volume transportation customers. The aggregation
6 agreement was written with that perspective in mind. If the Commission deems it appro-
7 priate, Columbia will amend the aggregation agreement to prevent confusion.

8
9 Q: Do marketers control, operate or manage utility facilities?

10 A: No. Marketers are simply customer agents for the purposes of buying commodity gas
11 supply and arranging for transportation service to deliver the commodity to Columbia's
citygate for delivery by Columbia to the customer's burnertip. Columbia will retain op-
13 eration, control and management of its facilities under the proposed program.

14
15 Q: The Commission's Order of January 27, 2000 found that Columbia's Customer Choice
16 program differs in material respects from brokers and dealers of natural gas arranging
17 supplies of natural gas as described in Administrative Case No. 297. Do you agree?

18 A: Only in part. I agree that some aspects of transportation under Columbia's Small Volume
19 Gas Transportation Service and Small Volume Aggregation Service are materially differ-
20 ent from transportation for large volume customers pursuant to Administrative Case No.
21 297. However, I do not agree that the marketers under Columbia's proposed program are
22 materially different from the brokers and dealers described in Administrative Case No.
297.

1 Q: How do Columbia's small volume transportation services differ from its large volume
2 transportation services?

3 A: Under either scenario, all brokers, dealers and marketers must abide by the terms and
4 conditions set forth in Columbia's tariff. Small volume customers participating in Co-
5 lumbia's proposed program are protected because they are not at risk of losing gas sup-
6 ply. Columbia is committing to supply customer requirements, even in the case of a sup-
7 ply failure by a marketer. In contrast, there is no such back-up guarantee from Columbia
8 for large volume transportation customers. Those customers are at risk of losing access
9 to supply if their marketer fails. Other, less material, differences include the fact that
10 small volume marketers must be certified and satisfy many requirements for customer en-
11 rollment; large volume marketers do not.

13 Q: How do marketers in Columbia's proposed program differ from the brokers or dealers of
14 natural gas that the Commission found unnecessary to regulate in Administrative Case
15 No. 297?

16 A: The marketers in Columbia's proposed program are in essence no different from the bro-
17 kers or dealers referenced in Administrative Case No. 297. Both are in the business of ar-
18 ranging supplies of natural gas. In all cases, marketers relinquish title of the gas to cus-
19 tomers at or before it reaches Columbia's city gate. There are many instances where a
20 larger customer's marketer acts as a customer's agent for aggregating the flow of gas
21 with the local distribution company. Small customer marketers will do the same. In the
22 case of both, the marketplace will determine their value to their customers and thus their
viability. The marketplace will serve to regulate their actions to a large degree.

1 In fact, for practical purposes calling some suppliers "marketers" and others "brokers and
2 dealers" tends to broaden the perceived gulf between the two. Columbia sees no differ-
3 ence in the companies formerly referred to as brokers and dealers and those companies
4 that we now refer to as marketers. Columbia's large volume transportation service tariff
5 issued in 1995 refers to a customer's marketer or broker. In fact, any of the "brokers and
6 dealers" serving larger customers may very well enter the market to serve smaller cus-
7 tomers. If they do, the only distinction will be in the need to comply with Columbia's
8 proposed program and certification requirements, the types of customers they will ac-
9 quire, and the difference in Columbia's tariff schedule.

10
11 Q: Does the Commission have regulatory oversight of marketers if they are not agents of
Columbia?

13 A: Yes, the Commission maintains regulatory oversight via the requirements in Columbia's
14 tariff. The marketer is required to execute an Aggregation Agreement and comply with
15 the requirements of Columbia's tariff. As the Commission noted in its Order dated Janu-
16 ary 27, 2000, on page 20, under Columbia's proposed program and tariffs the marketer is
17 limited in its authority to supply the commodity. Columbia retains ultimate responsibility
18 for the provision of gas to customers and authority over marketers. Even though the
19 marketers are not Columbia's agents, Columbia exercises the same degree of control that
20 the Commission recognized in its Order of January 27, 2000 at page 21. Marketers for
21 small volume customers do not have the autonomy traditionally associated with a "util-
22 ity" as defined in KRS 278.010 or even the autonomy currently afforded marketers for
large volume customers, who are not currently actively regulated by the Commission.

1 As the Commission found in Administrative Case No. 297, the marketers are self-
2 regulating. However, unlike for those large volume customers able to fend for them-
3 selves if their agent failed, Columbia retains the utility obligation to satisfy the needs of
4 small volume transportation customers. Thus, as the Commission stated in its Order of
5 January 27, 2000, the question of whether these marketers are "utilities" subject to full
6 regulation by the Commission does not require a final decision during the limited term of
7 Columbia's program.

8
9 Q: How are marketers answerable to the Commission?

10 A: Marketers are answerable to the Commission through the Commission's jurisdiction over
11 Columbia's tariff which sets forth the certification requirements imposed upon marketers
to participate in the program and the standards of operation once approved for the pro-
13 gram. While the Commission may not choose to exercise traditional regulatory authority
14 and control over marketers under Columbia's proposed program, it can, through Colum-
15 bia, exercise authority and indirect control over marketers participating in the program.

16 Q. Does this complete your prepared direct testimony in this proceeding?

17 A. Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Prepared Direct Testimony of Judy M. Cooper was served upon all parties of record by regular U.S. Mail this 16th day of March, 2000.

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